

Exhibit 2

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L. Kruger

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In Re: Case No.

12-12020(MG)

RESIDENTIAL CAPITAL, LLC,

et al., (Jointly Administered)

(Bankr. S.D.N.Y.)

Debtors

-----x

DEPOSITION OF LEWIS KRUGER

New York, New York

Thursday, July 11, 2013

Reported by:

THOMAS A. FERNICOLA, RPR

JOB NO. 63547

Page 2	Page 3
<p data-bbox="175 159 467 184">1 L. Kruger</p> <p data-bbox="175 191 188 216">2</p> <p data-bbox="175 222 188 247">3</p> <p data-bbox="175 254 188 279">4</p> <p data-bbox="175 285 188 310">5</p> <p data-bbox="175 317 483 380">6 July 11, 2013 7 10:06 a.m.</p> <p data-bbox="175 386 188 411">8</p> <p data-bbox="175 417 188 443">9</p> <p data-bbox="175 449 784 638">10 Deposition of LEWIS KRUGER, held at the 11 Law Offices of White & Case, LLP, 1155 Avenue of 12 the Americas, New York, New York, before 13 Thomas A. Fernicola, a Registered Professional 14 Reporter and Notary Public of the State of New 15 York. 16 17 18 19 20 21 22 23 24 25</p>	<p data-bbox="849 159 1182 184">1 L. Kruger</p> <p data-bbox="849 191 1198 216">2 A P P E A R A N C E S :</p> <p data-bbox="849 222 862 247">3</p> <p data-bbox="849 254 862 279">4</p> <p data-bbox="849 285 1442 474">5 WHITE & CASE 6 Attorneys for the Ad Hoc Group of 7 Junior Secured Noteholders 8 1155 Avenue of the Americas 9 New York, New York 10036 10 BY: J. CHRISTOPHER SHORE, ESQ. 11 VANESSA SODERBERG, ESQ. 12 13 14</p> <p data-bbox="849 579 1458 768">15 MORRISON & FOERSTER 16 Attorneys for the Debtor and the Witness 17 1290 Avenue of the Americas 18 New York, New York 10104 19 BY: CHARLES KERR, ESQ. 20 J. ALEXANDER LAWRENCE, ESQ. 21 22 23 24 25</p>
Page 4	Page 5
<p data-bbox="175 1062 638 1125">1 L. Kruger 2 A P P E A R A N C E S (Continued): 3</p> <p data-bbox="175 1157 784 1377">4 KRAMER LEVIN NAFTALIS & FRANKEL 5 Attorneys for the Official Committee 6 of Unsecured Creditors 7 1177 Avenue of the Americas 8 New York, New York 10036 9 BY: PHILIP KAUFMAN, ESQ. 10 DANIEL EGGERMANN, ESQ. 11 12 13</p> <p data-bbox="175 1482 678 1703">14 WILLKIE FARR & GALLAGHER 15 Attorneys for Monarch, Stonehill, 16 Bayview and CQS 17 787 Seventh Avenue 18 New York, New York 10019 19 BY: MARY EATON, ESQ. 20 EMMA JAMES, ESQ. 21 22 23 24 25</p>	<p data-bbox="849 1062 1401 1125">1 L. Kruger 2 A P P E A R A N C E S (Continued): 3</p> <p data-bbox="849 1157 1417 1314">4 JONES DAY 5 Attorneys for FGIC 6 222 East 41st Street 7 New York, New York 10017 8 BY: RICHARD WYNNE, ESQ. 9 10</p> <p data-bbox="849 1377 1417 1545">11 ALSTON & BIRD 12 Attorneys for Wells Fargo 13 90 Park Avenue 14 New York, New York 10016 15 BY: WILLIAM HAO, ESQ. 16 17</p> <p data-bbox="849 1608 1425 1766">18 McKOOL SMITH 19 Attorneys for Freddie Mac 20 One Bryant Park 21 New York, New York 10036 22 BY: MICHAEL CARNEY, ESQ. 23 24 25</p>

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1 L. Kruger
2 A P P E A R A N C E S (Continued):
3
4 DECHERT
5 Attorneys for Bank of New York Mellon
6 1095 Avenue of the Americas
7 New York, New York 10036
8 BY: JAMES MOORE, ESQ.
9
10
11 SEWARD & KISSEL
12 Attorneys for Law Debenture Trust
13 Company of New York
14 One Battery Park
15 New York, New York 10004
16 BY: MICHAEL WEITMAN, ESQ.
17
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1 L. Kruger
2 A P P E A R A N C E S (Continued):
3
4 ROPES & GRAY
5 Attorneys for Steering Committee of
6 RMBS Holders
7 800 Boylston Street
8 Boston, Massachusetts 02199
9 BY: ANDREW DEVORE, ESQ.
10
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1 L. Kruger
2 L E W I S K R U G E R,
3 called as a witness, having been duly sworn
4 by a Notary Public, was examined and
5 testified as follows:
6 BY THE REPORTER:
7 Q. Please state your full name and
8 address for the record.
9 A. Lewis Kruger, 257 West 86th Street,
10 New York, New York.
11 (A Discussion was Held off the
12 Record.)
13 MS. EATON: Mary Eaton, Willkie
14 Farr & Gallagher, on behalf of Monarch,
15 Stonehill, Bayview and CQS, together with
16 my colleague, Emma James.
17 MR. KERR: Charles Kerr of Morrison
18 Foerster, on behalf of the debtor. And
19 I'll be representing Mr. Kruger, and with
20 my colleague, Alex Lawrence.
21 MR. WYNNE: Richard Wynne of Jones
22 Day on behalf of FGIC.
23 MR. HAO: William Hao, on behalf of
24 Wells Fargo.
25 MR. KAUFMAN: Phillip Kaufman from

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1 L. Kruger
2 Kramer Levin, on behalf of the committee.
3 And with me is Daniel Eggermann, also on
4 behalf of the committee.
5 MR. CARNEY: Michael Carney from
6 McKool Smith, on behalf of Freddie Mac.
7 MR. MOORE: James Moore from Dechert,
8 on behalf of Bank of New York Mellon.
9 MR. WEITMAN: Mike Weitman from
10 Seward & Kissel, on behalf of Law
11 Debenture.
12 MS. SODERBERG: Vanessa Soderberg
13 from White & Case, on behalf of Junior
14 Secured Noteholders.
15 MR. SHORE: Chris Shore from White &
16 Case on behalf of Junior Secured
17 Noteholders.
18
19 EXAMINATION BY MS. EATON:
20 Q. Good morning, Mr. Kruger. I see
21 you've got a cup of coffee --
22 A. I do.
23 Q. -- and you're comfortable, I hope.
24 A. I am.
25 Q. If ever you need a --

Page 10	Page 11
<p>1 L. Kruger</p> <p>2 MR. KERR: Let her -- he is the most</p> <p>3 important person here --</p> <p>4 THE WITNESS: Okay.</p> <p>5 MR. KERR: -- so let her ask her</p> <p>6 question and then you respond.</p> <p>7 BY MS. EATON:</p> <p>8 Q. If ever you need a break, just let me</p> <p>9 know and we'll take one for you.</p> <p>10 A. Thank you.</p> <p>11 Q. Now, I understand that you served or</p> <p>12 are still serving as chief restructuring</p> <p>13 officer of the debtors?</p> <p>14 A. Yes, I am.</p> <p>15 Q. And you were appointed in that role,</p> <p>16 I believe on February 11th of 2013?</p> <p>17 A. Yes.</p> <p>18 Q. And is it also correct that the court</p> <p>19 approved your appointment as CRO of the debtors</p> <p>20 on March 5, 2013?</p> <p>21 A. That is correct.</p> <p>22 Q. Now, I have read a little bit about</p> <p>23 your background. You've worked for many years</p> <p>24 as a restructuring attorney; is that correct?</p> <p>25 A. Yes, it is.</p>	<p>1 L. Kruger</p> <p>2 Q. And prior to your serving as CRO of</p> <p>3 the debtors, you were a partner at Stroock; is</p> <p>4 that correct?</p> <p>5 A. Correct.</p> <p>6 Q. And you were co-head of the</p> <p>7 restructuring department at that firm?</p> <p>8 A. Yes.</p> <p>9 Q. When you started in your role as</p> <p>10 chief restructuring officer of the debtors, you</p> <p>11 were not serving the debtors in any kind of</p> <p>12 legal capacity, were you?</p> <p>13 A. No, I was not.</p> <p>14 Q. It was not part of your role as CRO</p> <p>15 to give legal advice to the debtors; correct?</p> <p>16 A. Correct.</p> <p>17 MS. EATON: This will be Kruger 1.</p> <p>18 BY MS. EATON:</p> <p>19 Q. In a moment the court reporter is</p> <p>20 going to be handing you a document that we will</p> <p>21 mark as Kruger Exhibit 1, which is the</p> <p>22 Settlement Agreement dated as of May 23, 2013,</p> <p>23 filed in the debtor's Chapter 11 cases under</p> <p>24 Docket No. 3929-2.</p> <p>25</p>
Page 12	Page 13
<p>1 L. Kruger</p> <p>2 (Kruger's Exhibit 1, Settlement</p> <p>3 Agreement dated May 23, 2013, was marked</p> <p>4 for identification.)</p> <p>5 BY MS. EATON:</p> <p>6 Q. Are you familiar with this document?</p> <p>7 A. Yes, I am.</p> <p>8 Q. And this is the Settlement Agreement</p> <p>9 between the parties listed on this second</p> <p>10 physical page of the document, between FGIC,</p> <p>11 the debtors, the trustees and others?</p> <p>12 A. Yes.</p> <p>13 Q. If I refer to this as the "FGIC</p> <p>14 Settlement Agreement," would that be all right</p> <p>15 with you?</p> <p>16 A. Yes, it will be.</p> <p>17 Q. By the way, did you refer to this</p> <p>18 agreement using any particular description?</p> <p>19 A. No.</p> <p>20 Q. When did you first become aware of</p> <p>21 the FGIC Settlement Agreement?</p> <p>22 A. During the latter part of May of this</p> <p>23 year.</p> <p>24 Q. How did you first become aware of the</p> <p>25 FGIC Settlement Agreement?</p>	<p>1 L. Kruger</p> <p>2 A. I saw the document May 20th, 22nd,</p> <p>3 23rd, some date like that.</p> <p>4 Q. How did you come to first see the</p> <p>5 FGIC Settlement Agreement on or about May 23,</p> <p>6 2013?</p> <p>7 A. I don't recall.</p> <p>8 Q. You don't remember who showed it to</p> <p>9 you?</p> <p>10 A. No.</p> <p>11 Q. You don't remember if your counsel</p> <p>12 provided it to you?</p> <p>13 A. I just don't recall.</p> <p>14 Q. Were you aware of the existence of a</p> <p>15 settlement agreement involving the FGIC wrapped</p> <p>16 trusts before May 23, 2013?</p> <p>17 A. I'm sorry, can you repeat the</p> <p>18 question? You're talking about a settlement</p> <p>19 agreement or a settlement?</p> <p>20 Q. It's a fair point.</p> <p>21 Prior to May 23, 2013, were you aware</p> <p>22 that there were discussions underway between</p> <p>23 and among FGIC, the trustees and others, with</p> <p>24 respect to potential commutation of the FGIC</p> <p>25 wrapped policies?</p>

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<p>1 L. Kruger</p> <p>2 MR. KERR: Objection.</p> <p>3 BY MS. EATON:</p> <p>4 Q. You can answer.</p> <p>5 A. Yes.</p> <p>6 Q. And how did you become aware that</p> <p>7 there were negotiations on that subject?</p> <p>8 A. In, I guess in early April as part of</p> <p>9 the mediation, I became aware that there was a</p> <p>10 prospective settlement between FGIC and the</p> <p>11 trusts.</p> <p>12 Q. Did you say a "prospective</p> <p>13 settlement"?</p> <p>14 A. Yes.</p> <p>15 Q. How did you come to learn that there</p> <p>16 was a prospective settlement of that sort?</p> <p>17 A. Through the mediation process.</p> <p>18 Q. What do you mean by that?</p> <p>19 MR. KERR: Mary, we're going to</p> <p>20 have -- let me just help the witness here.</p> <p>21 MS. EATON: Well --</p> <p>22 MR. KERR: No.</p> <p>23 MS. EATON: -- they're his words.</p> <p>24 Those are the words he used. I'm just</p> <p>25 asking him what he meant by that, and I</p>	<p>1 L. Kruger</p> <p>2 prefer that you not make speaking</p> <p>3 objections or assist the witness in</p> <p>4 answering a question regarding his own</p> <p>5 language.</p> <p>6 MR. KERR: I'm not trying to assist</p> <p>7 the witness. All I wanted to state is, as</p> <p>8 you were aware, there is an order entered</p> <p>9 by the court providing for confidentiality</p> <p>10 with respect to the mediation.</p> <p>11 In answering any questions,</p> <p>12 Mr. Kruger, is respecting that</p> <p>13 confidentiality. So he is free to answer</p> <p>14 questions as he can, consistent with that</p> <p>15 confidentiality order.</p> <p>16 I just want to be very clear that</p> <p>17 what he is going to be acting and</p> <p>18 testifying consistently. Okay.</p> <p>19 MS. EATON: I understand your</p> <p>20 position. You understand we disagree with</p> <p>21 that position. Both of us are reserving</p> <p>22 our rights.</p> <p>23 BY MS. EATON:</p> <p>24 Q. Can you please answer the question,</p> <p>25 Mr. Kruger, what did you mean when you used the</p>
Page 16	Page 17
<p>1 L. Kruger</p> <p>2 words, quote, "through the mediation process,"</p> <p>3 close quote?</p> <p>4 A. I saw a -- I saw a proposal for a</p> <p>5 settlement.</p> <p>6 Q. A physical proposal, as in a</p> <p>7 document?</p> <p>8 A. I believe so.</p> <p>9 Q. Was it a term sheet?</p> <p>10 A. I think it may have been.</p> <p>11 Q. It wasn't a fully fleshed out</p> <p>12 agreement in any sense of that term; is that</p> <p>13 fair?</p> <p>14 A. Yes.</p> <p>15 Q. Who showed you the proposal?</p> <p>16 A. I don't recall.</p> <p>17 Q. Was it during a mediation session,</p> <p>18 per se, with the mediator that you saw that</p> <p>19 document?</p> <p>20 MR. KERR: Objection.</p> <p>21 BY MS. EATON:</p> <p>22 Q. Let me fix it.</p> <p>23 Was it in a session at which the</p> <p>24 mediator was present that you first saw that</p> <p>25 document?</p>	<p>1 L. Kruger</p> <p>2 A. I just don't recall.</p> <p>3 Q. It could have been in the presence of</p> <p>4 Judge Peck or outside the presence of Judge</p> <p>5 Peck?</p> <p>6 MR. KERR: Objection.</p> <p>7 A. No.</p> <p>8 Q. You don't remember one way or the</p> <p>9 other?</p> <p>10 A. No.</p> <p>11 Q. Who else was there?</p> <p>12 A. I think counsel from MoFo.</p> <p>13 Q. Anyone else?</p> <p>14 A. Not that I recall.</p> <p>15 Q. Was it counsel from MoFo who showed</p> <p>16 you the document?</p> <p>17 A. I don't recall.</p> <p>18 Q. Do you have any understanding of how</p> <p>19 that document came to be, that is, how it came</p> <p>20 to be prepared?</p> <p>21 A. No, I don't.</p> <p>22 Q. Do you know who was involved in</p> <p>23 preparing the document?</p> <p>24 A. No, I don't.</p> <p>25 Q. Do you know anything at all about the</p>

Page 18	Page 19
<p>1 L. Kruger</p> <p>2 discussions that led to the preparation of that</p> <p>3 document?</p> <p>4 A. No.</p> <p>5 Q. That's a "yes" or "no" question.</p> <p>6 MR. KERR: That's fair.</p> <p>7 BY MS. EATON:</p> <p>8 Q. Let me, just so the court reporter</p> <p>9 gets it down straight, do you know anything at</p> <p>10 all about the facts and circumstances that led</p> <p>11 to the preparation of that document?</p> <p>12 A. No, I do not.</p> <p>13 Q. Would it be fair to say that you</p> <p>14 personally had no idea that there were</p> <p>15 discussions underway about an -- possible</p> <p>16 settlement involving the FGIC wrapped trusts?</p> <p>17 MR. KERR: Objection.</p> <p>18 A. I don't recall knowing anything about</p> <p>19 that before I saw the April presentation.</p> <p>20 Q. Prior to the date when you saw that</p> <p>21 that document, the term sheet, had you</p> <p>22 participated in mediation sessions with</p> <p>23 Magistrate Judge Peck?</p> <p>24 A. Yes.</p> <p>25 Q. And during any of those sessions, was</p>	<p>1 L. Kruger</p> <p>2 the subject of a potential settlement involving</p> <p>3 the FGIC wrapped trusts ever discussed? I'm</p> <p>4 not asking you to describe it, just "yes" or</p> <p>5 "no," was it ever discussed?</p> <p>6 MR. KERR: And I will let him answer</p> <p>7 that question, but no further, if you</p> <p>8 recall.</p> <p>9 A. Yes.</p> <p>10 Q. When?</p> <p>11 A. During mediation sessions.</p> <p>12 Q. Can you give the date?</p> <p>13 A. No.</p> <p>14 Q. Even an approximate date?</p> <p>15 A. March.</p> <p>16 Q. Some time in March? Early March,</p> <p>17 late March, any idea?</p> <p>18 A. No recollection.</p> <p>19 Q. Who was at the mediation session when</p> <p>20 that subject was raised?</p> <p>21 A. I have no idea.</p> <p>22 Q. Was it the -- was it an all-hands</p> <p>23 session? Do you know what I mean by that?</p> <p>24 MR. KERR: Objection.</p> <p>25</p>
Page 20	Page 21
<p>1 L. Kruger</p> <p>2 BY MS. EATON:</p> <p>3 Q. Okay.</p> <p>4 Let me rephrase the question.</p> <p>5 There were -- isn't it correct that</p> <p>6 there were sessions with the mediator that</p> <p>7 sometimes involved all of the mediating parties</p> <p>8 and sometimes involved a subset of the</p> <p>9 mediating parties?</p> <p>10 A. Yes.</p> <p>11 Q. At this particular session that you</p> <p>12 described, was this an occasion where all of</p> <p>13 the mediating parties were present or rather an</p> <p>14 occasion where a subset of the mediation</p> <p>15 parties were present?</p> <p>16 MR. KERR: Objection to form.</p> <p>17 A. I think a subset. I don't recall.</p> <p>18 Q. At that session, did anyone present</p> <p>19 indicate whether the prospective settlement</p> <p>20 under discussion had been reduced to any kind</p> <p>21 of a writing?</p> <p>22 MR. KERR: Objection. And I'll</p> <p>23 direct him not to answer that in</p> <p>24 confidentiality, based on the</p> <p>25 confidentiality mediation.</p>	<p>1 L. Kruger</p> <p>2 BY MS. EATON:</p> <p>3 Q. I assume you're going to follow your</p> <p>4 counsel's direction.</p> <p>5 A. I am going to in this case.</p> <p>6 Q. Do you know who was involved in those</p> <p>7 discussions about this potential settlement?</p> <p>8 MR. KERR: Objection. Asked and</p> <p>9 answered.</p> <p>10 A. No.</p> <p>11 Q. Do you know whether anyone else at</p> <p>12 the debtor's knew who was involved in those</p> <p>13 discussions?</p> <p>14 A. I don't know.</p> <p>15 Q. Is that something that you would have</p> <p>16 known in your capacity as chief restructuring</p> <p>17 officer of the debtor's?</p> <p>18 MR. KERR: Objection.</p> <p>19 A. I just don't know whether anybody</p> <p>20 from the debtor had any of those discussions.</p> <p>21 Q. Did you have discussions with --</p> <p>22 leaving aside, the debtors have a board of</p> <p>23 directors; right?</p> <p>24 A. Yes.</p> <p>25 Q. And you discussed from time to time</p>

1 L. Kruger
2 the progress of discussions, mediation
3 discussions, didn't you?
4 A. Yes.
5 Q. You would report to the board on what
6 was occurring during the mediation sessions?
7 A. Yes.
8 Q. Apart from members of the board, did
9 you discuss the mediation with anyone else at
10 the debtors? And I'm excluding the debtor's
11 outside counsel.
12 MR. KERR: So anyone other than
13 board?
14 BY MS. EATON:
15 Q. Anyone other than board and apart
16 from the debtor's outside counsel, did you
17 discuss with anyone else at the debtor's
18 anything to do with the mediation?
19 A. Not that I recall.
20 Q. At the mediation sessions, did anyone
21 from the debtors present the debtors other than
22 yourself? And, again, I'm excluding outside
23 counsel.
24 A. No.
25 Q. But you yourself represented the

1 L. Kruger
2 debtors at those sessions?
3 A. Yes.
4 Q. I just want to make sure I understand
5 something.
6 So in early April when you learned of
7 this prospective settlement, I think is what
8 you said, would it be fair to say this was news
9 to you?
10 MR. KERR: Objection. Asked and
11 answered.
12 THE WITNESS: Can I answer?
13 MR. KERR: You can answer.
14 A. Yes.
15 Q. During the period between this
16 mediation session in early April and the time
17 you first saw the agreement on May 23rd, did
18 you have any discussions about the FGIC
19 settlement or a prospective FGIC settlement?
20 MR. KERR: You can answer that "yes"
21 or "no."
22 A. No.
23 Q. When you first learned about the
24 prospective FGIC settlement in early
25 April 2013, did you report that fact to the

1 L. Kruger
2 debtors, the board of directors of the debtors?
3 A. I don't recall.
4 Q. Did you discuss that with the
5 debtor's outside counsel, "yes" or "no"?
6 A. Yes.
7 Q. You did?
8 A. Yes.
9 Q. On how many occasions?
10 A. Several.
11 Q. Did you discuss that the settlement,
12 the FGIC settlement with the board on or about
13 May 23rd?
14 A. Yes.
15 Q. But you had not discussed the FGIC
16 settlement or a prospective FGIC settlement
17 with the board before that date; correct?
18 A. No, that's not correct.
19 Q. Okay.
20 Then I misunderstood. When did you
21 discuss the FGIC settlement or the prospective
22 FGIC settlement with the board of directors of
23 the debtor's?
24 A. My best recollection is probably
25 early May.

1 L. Kruger
2 Q. Is that the first time that you
3 discussed the prospective FGIC settlement with
4 the board?
5 A. I think so.
6 Q. Did you discuss the, either the
7 settlement itself or the prospective FGIC
8 settlement with the board after that?
9 A. Yes.
10 Q. How many times?
11 A. I don't recall.
12 Q. More than once?
13 A. I just don't recall.
14 Q. What did you discuss in this early
15 May discussion you had with --
16 MS. EATON: Let me get my question
17 out and you can make your objection. I
18 think you know that's the way it works.
19 BY MS. EATON:
20 Q. Was this early May discussion with
21 the debtor's board that you referenced, was
22 that at a board meeting?
23 A. Yes.
24 Q. Was it a telephonic board meeting,
25 in-person meeting?

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1 L. Kruger
2 A. I don't recall.
3 Q. Would your time records reflect
4 whether it was an in-person meeting or a
5 telephonic meeting?
6 A. They probably do.
7 Q. By the way, did you -- you're aware
8 that there was a request for documents made in
9 connection with the present dispute?
10 A. Yes.
11 Q. Did you look for any documents?
12 A. Yes, I did.
13 Q. Okay.
14 Did you look at your time records?
15 A. I reviewed them myself.
16 Q. To see whether they were responsive
17 to the request that had been propounded;
18 correct?
19 A. Yes.
20 Q. And did you find anything in your
21 time records that was responsive?
22 A. I don't think so.
23 Q. Was there a reference in your time
24 records to the early May board meeting?
25 A. I don't recall.

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1 L. Kruger
2 Q. Was the settlement agreement
3 referenced in your time records at all?
4 A. Well, the settlement agreement didn't
5 come into existence until the latter part of
6 May.
7 Q. Uh-huh.
8 A. I could not have referenced it prior
9 to that time.
10 Q. That wasn't a time limited question,
11 actually, so if you were confused, let's get
12 that sorted out.
13 Let's talk about your time records
14 generally. And correct me if I am wrong, I
15 understood that -- you to say, to testify, that
16 in connection with producing documents as part
17 of this, the present motion, you reviewed your
18 time records for responsive information.
19 A. Correct.
20 Q. And did you see anything in reviewing
21 your time records that referenced the FGIC
22 Settlement Agreement?
23 A. No.
24 Q. Did you see anything in your time
25 records that referenced a prospective FGIC

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1 L. Kruger
2 settlement?
3 A. No.
4 Q. Discussions about a potential FGIC
5 settlement?
6 A. I don't recall seeing it.
7 Q. What did your time records say about
8 this meeting with the board in early May 2013?
9 MR. KERR: Objection. Assumes facts
10 not in evidence.
11 BY MS. EATON:
12 Q. Do your time records reflect the fact
13 that there was a board meeting in early
14 May 2013?
15 A. I believe so.
16 Q. What do your time records say about
17 that meeting, if anything?
18 A. I don't recall.
19 Q. Are there minutes of that meeting?
20 A. I don't know.
21 Q. Was there a person responsible for
22 preparing minutes of the board of directors
23 meetings?
24 A. I don't know.
25 Q. Have you ever seen minutes of the

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1 L. Kruger
2 meetings of the board of directors of the
3 debtor's that you attended?
4 A. No.
5 Q. Neither the final minutes nor draft
6 minutes?
7 A. No.
8 Q. Does the board of directors of the
9 debtors maintain a minute book? Do the debtors
10 maintain a book of minutes reflecting the
11 meetings of its board?
12 A. I don't know.
13 Q. You have no idea one way or the
14 other?
15 A. Correct.
16 Q. So when you were brought on as chief
17 restructuring officer of the debtors, you did
18 not as part of your duties, you did not look at
19 any board minutes in connection with that; is
20 that right?
21 A. That's correct.
22 Q. And you didn't ask anybody whether
23 there were any minutes?
24 A. That's correct.
25 Q. And you didn't ask anybody whether

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<p>1 L. Kruger</p> <p>2 the board had made any decisions with respect</p> <p>3 to the issues in dispute in connection with the</p> <p>4 Chapter 11 cases more generally?</p> <p>5 MR. KERR: Objection.</p> <p>6 A. Do you want to ask me that question</p> <p>7 again?</p> <p>8 MR. KERR: Could we have the question</p> <p>9 read back.</p> <p>10 MS. EATON: I'll withdraw that --</p> <p>11 I'll withdraw the question.</p> <p>12 BY MS. EATON:</p> <p>13 Q. Do you know whether the board passed</p> <p>14 any resolutions related to the FGIC settlement</p> <p>15 agreement?</p> <p>16 A. I believe so.</p> <p>17 Q. And were you at the meeting of the</p> <p>18 board of directors where that resolution was</p> <p>19 passed?</p> <p>20 A. Yes.</p> <p>21 Q. And was a written resolution provided</p> <p>22 to the members of the board in advance of the</p> <p>23 vote?</p> <p>24 A. I don't know.</p> <p>25 Q. You don't remember one way or the</p>	<p>1 L. Kruger</p> <p>2 other?</p> <p>3 A. No, I don't remember.</p> <p>4 Q. Do you remember what the resolution</p> <p>5 said?</p> <p>6 A. The board authorized me to proceed</p> <p>7 with the FGIC settlement.</p> <p>8 Q. And when did the board give you that</p> <p>9 authorization?</p> <p>10 A. During May of 2013.</p> <p>11 Q. At what meeting?</p> <p>12 A. I don't recall.</p> <p>13 Q. How many meetings of the board of</p> <p>14 directors took place in May 2013?</p> <p>15 A. Several.</p> <p>16 Q. Presumably it was some time before</p> <p>17 May 23rd?</p> <p>18 A. Yes.</p> <p>19 Q. What did you and the board discuss</p> <p>20 about with respect to your being authorized to</p> <p>21 proceed with the FGIC settlement?</p> <p>22 MR. KERR: And here I'm going to</p> <p>23 interject, and I believe you can ask the</p> <p>24 witness, I believe the board meetings were</p> <p>25 with counsel present. And to the extent</p>
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<p>1 L. Kruger</p> <p>2 they were, I think we're going to assert</p> <p>3 attorney-client privilege.</p> <p>4 So if you want to determine that, you</p> <p>5 can; but to the extent that these board</p> <p>6 meetings were with counsel present, we will</p> <p>7 assert a privilege.</p> <p>8 MR. MOORE: Just a clarification from</p> <p>9 counsel. Irrespective of what was said,</p> <p>10 it's just the presence of an attorney at</p> <p>11 that meeting which would lead to an</p> <p>12 assertion of a privilege?</p> <p>13 MR. KERR: I'm not asserting that</p> <p>14 across all aspects, but with respect to</p> <p>15 this aspect of it, I will.</p> <p>16 MS. EATON: I don't understand your</p> <p>17 answer. I thought Chris's question was a</p> <p>18 fair one.</p> <p>19 MR. KERR: My response to Chris was</p> <p>20 simply that I'm not saying all board</p> <p>21 meetings just because counsel present we</p> <p>22 are asserting a privilege; but with respect</p> <p>23 to this issue, we will assert a privilege.</p> <p>24 MS. EATON: So with respect to --</p> <p>25 just to be clear, Mr. Kerr, with respect to</p>	<p>1 L. Kruger</p> <p>2 this meeting, the debtors are asserting a</p> <p>3 privilege on the basis that counsel was</p> <p>4 present at the meeting?</p> <p>5 MR. KERR: With respect to the</p> <p>6 board's -- discussions with the board about</p> <p>7 authorizing Mr. Kruger, to enter in -- to</p> <p>8 delegate to Mr. Kruger the responsibility</p> <p>9 of negotiating an entry in the FGIC</p> <p>10 settlement; correct.</p> <p>11 BY MS. EATON:</p> <p>12 Q. Did the board make a business</p> <p>13 decision to authorize you to enter into that</p> <p>14 agreement?</p> <p>15 MR. KERR: Objection.</p> <p>16 A. I don't know whether it's a business</p> <p>17 decision, but they authorized me to enter into</p> <p>18 an agreement.</p> <p>19 Q. Well, you understand something about</p> <p>20 what the role of the board of directors of a</p> <p>21 company is; right?</p> <p>22 A. Yes.</p> <p>23 Q. You're a very experienced attorney</p> <p>24 and you've been working in the field for quite</p> <p>25 some time; right?</p>

1 L. Kruger
2 A. Yes.
3 Q. And you understand that part of the
4 role of a board of directors is to make
5 business determinations about what's in the
6 best interests of the entity; right?
7 MR. KERR: Objection.
8 BY MS. EATON:
9 Q. Isn't that right?
10 A. Yes.
11 Q. And in exercising the board's
12 business judgment, one of the things that they
13 sometimes do is to determine whether to enter
14 into settlement agreements; isn't that right?
15 MR. KERR: Objection.
16 A. I assume so.
17 Q. Okay.
18 Do you know whether the board of
19 directors exercised any business judgment in
20 authorizing you to enter into the FGIC
21 Settlement Agreement?
22 MR. KERR: Objection.
23 A. As I said before, they authorized me
24 to enter into the FGIC Settlement Agreement.
25 Q. Do you know anything about the reason

1 L. Kruger
2 why the board authorized you to do so?
3 A. That would be facetious wisdom and
4 good judgment on their part.
5 Q. I'm sorry, I didn't understand your
6 last answer.
7 A. Why don't you ask me the question
8 again and I'll answer it.
9 Q. Sure. I'll ask you a new question.
10 What were the reasons why the board
11 authorized you to enter into the FGIC
12 Settlement Agreement?
13 MR. KERR: Objection.
14 A. Because I was the chief restructuring
15 officer of the company and I had the authority
16 to do so, and they gave me that authority.
17 Q. Did you think entering into the
18 agreement was a good idea?
19 A. Yes, I did.
20 Q. Did you believe it was in the best
21 interest of the debtors?
22 A. Yes, I did.
23 Q. Did you express that view to the
24 board of directors?
25 A. I'm sure I did.

1 L. Kruger
2 Q. What did you say to them in that
3 regard?
4 MR. KERR: Objection. Again, to the
5 extent you had discussions with the board
6 with counsel present, I will object to
7 privilege; but to the extent that you had
8 discussions without counsel present, you
9 can testify to that.
10 A. They were all with counsel present.
11 Q. You formed your own view about the
12 benefits of entering into this agreement for
13 the debtors; right?
14 A. Yes, I did.
15 Q. And in forming that view, you were
16 doing so in your capacity as chief
17 restructuring officer of the debtor's; correct?
18 A. Correct.
19 Q. And we've already established, I
20 think, that in that capacity you were not
21 serving the debtors in any kind of legal role;
22 right?
23 A. Correct.
24 Q. Okay.
25 So what did you tell the board of

1 L. Kruger
2 directors about your view why entering into the
3 agreement was in the debtor's best interests?
4 MR. KERR: And, again, if you had
5 conversations with the board with counsel
6 present, I'm going to assert a privilege.
7 To the extent you had conversations with
8 the board without counsel present, you can
9 answer the question.
10 A. The only conversation I had with the
11 board were with counsel present.
12 Q. In forming -- you had thoughts
13 internally about whether it was in the best
14 interests of the debtor's to enter into this
15 agreement; right?
16 A. Yes.
17 Q. What were your thoughts on that
18 subject?
19 A. I thought that this agreement as part
20 of the overall global settlement agreement, was
21 sensible from the debtor's perspective, which
22 is my perspective, in that it eliminated from
23 the debtor's estates significant claims by the
24 trusts and by FGIC.
25 At the same time it was part of the

1 L. Kruger
2 mosaic of the global settlement agreement,
3 which generated in my mind a significant
4 benefit to all of the debtor's estates and to
5 their creditors, as well, with the injection of
6 the Ally contribution, the elimination of
7 significant litigation, the shortening of the
8 time process of the Chapter 11 proceedings.

9 And for all those reasons, I thought
10 this was a sensible things for the debtors to
11 do.

12 Q. And did you convey that view to the
13 board of directors?

14 A. I don't recall.

15 Q. Do you have any knowledge of the
16 basis on which the board of directors
17 authorized you to enter into the FGIC
18 Settlement Agreement on the debtor's behalf?

19 A. As I said, in my engagement letter I
20 believe I have the authority to act on behalf
21 of the debtors with respect to Chapter 11
22 issues, disclosure statements and the like. I
23 can refer to it, if you like.

24 And I think the board was merely
25 confirming my authority to do so.

1 L. Kruger

2 Q. Do you believe that you had authority
3 to enter into the FGIC Settlement Agreement
4 without the approval of the board of directors?

5 A. I believe so.

6 Q. Why then did the board of directors
7 pass a resolution authorizing you to sign the
8 agreement?

9 MR. KERR: Objection.

10 BY MS. EATON:

11 Q. Do you know?

12 MR. KERR: Misstates --
13 mischaracterizes testimony.

14 A. I reported to the board the results
15 of mediation as it progressed, and they
16 suggested that I continue on and authorized me
17 to continue on with the FGIC settlement.

18 Q. At the time you got the authorization
19 from the board to execute the settlement, had
20 you seen a physical copy of a draft settlement
21 agreement?

22 A. I don't recall.

23 Q. Did you have an understanding at that
24 time as to what the material terms of the
25 agreement were to be?

1 L. Kruger

2 A. Yes, I did.

3 Q. Did those material terms change in
4 any way between the time that you received
5 authorization from the board of directors to
6 sign the document agreement and when you
7 actually signed the agreement itself?

8 MR. KERR: Objection to form.

9 A. Not materially, to my mind.

10 Q. What do you mean by that?

11 A. There were changes to the settlement
12 agreement after May 23rd, I believe, but I
13 believe that they were inconsequential. I
14 don't recall what they were.

15 Q. During the period of time between the
16 date where you got authorization to sign the
17 agreement and when you actually signed the
18 agreement -- let me rephrase that.

19 During the period of time when you
20 received authorization from the board to sign
21 the agreement and May 23rd, were there any
22 material changes to the agreement or draft --

23 A. No.

24 Q. -- agreement during that period?

25 A. No.

1 L. Kruger

2 Q. Okay.

3 So, what you -- in other words, what
4 you had authorization to sign, whenever you got
5 that authorization, was essentially the same
6 deal that you actually signed?

7 MR. KERR: Objection to form.

8 A. Yes.

9 Q. Is it correct that the only two
10 documents that you saw reflecting the agreement
11 or potential agreement were the physical
12 document that you signed, the agreement itself
13 that we've marked as Kruger Exhibit 1, and the
14 term sheet that you referenced earlier in your
15 testimony?

16 MR. KERR: Objection.

17 A. You're talking just about documents;
18 correct?

19 Q. Yes.

20 A. That's correct.

21 Q. So the only two documents that you
22 saw that reflected the agreement, the potential
23 agreement, were those two documents, namely,
24 Kruger Exhibit 1 and the term sheet that you
25 referenced previously?

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<p>1 L. Kruger</p> <p>2 MR. KERR: Objection.</p> <p>3 A. I'm trying to answer the question,</p> <p>4 but in terms of documents, that's correct.</p> <p>5 Q. How about in terms other than</p> <p>6 documents?</p> <p>7 A. Well, there were always conversations</p> <p>8 during mediation about various aspects of the</p> <p>9 mediation.</p> <p>10 Q. Including with respect to this</p> <p>11 particular agreement or potential agreement?</p> <p>12 A. Yes.</p> <p>13 Q. But those discussions did not take</p> <p>14 place before early April, if I understood your</p> <p>15 testimony?</p> <p>16 MR. WYNNE: Objection.</p> <p>17 Mischaracterizes testimony.</p> <p>18 A. That's not what I said. I think I</p> <p>19 said there were discussions in March, as I</p> <p>20 recall.</p> <p>21 Q. You're right. I apologize.</p> <p>22 How many times during the mediation</p> <p>23 process was the prospect of a FGIC settlement</p> <p>24 discussed?</p> <p>25 A. I don't recall that.</p>	<p>1 L. Kruger</p> <p>2 Q. Do you remember who discussed that</p> <p>3 issue? Just names, not what they said.</p> <p>4 A. Who discussed that issue with me?</p> <p>5 Q. At the mediation. During the</p> <p>6 mediation sessions -- let's back up.</p> <p>7 During the mediation sessions, the</p> <p>8 subject of an agreement or prospective</p> <p>9 agreement with FGIC was discussed; correct?</p> <p>10 A. Yes.</p> <p>11 Q. And it was discussed more than one</p> <p>12 time?</p> <p>13 A. Yes.</p> <p>14 Q. You can't remember how many times?</p> <p>15 A. Correct.</p> <p>16 Q. Do you remember who discussed that</p> <p>17 issue during those sessions?</p> <p>18 MR. KERR: Objection.</p> <p>19 Go ahead.</p> <p>20 A. Judge Peck.</p> <p>21 Q. Anyone else?</p> <p>22 A. Counsel for the trustees.</p> <p>23 Q. Anyone else?</p> <p>24 A. Not that I recall.</p> <p>25 Q. When you referred to "counsel for the</p>
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<p>1 L. Kruger</p> <p>2 trustees," who were you referring to?</p> <p>3 A. Glenn Siegel at Dechert.</p> <p>4 Q. Anyone else?</p> <p>5 A. I don't recall anybody else.</p> <p>6 Q. How about Michael Johnson, did he</p> <p>7 discuss that issue at all during the sessions?</p> <p>8 A. Not with me.</p> <p>9 Q. How about Mark Kotlick (phonetic)?</p> <p>10 A. Not with me.</p> <p>11 Q. Do you know whether any of those</p> <p>12 individuals discussed the FGIC settlement or</p> <p>13 potential FGIC settlement outside of these</p> <p>14 mediation sessions?</p> <p>15 A. I have no idea.</p> <p>16 Q. Did you ever have any discussions</p> <p>17 with -- strike that.</p> <p>18 Did you participate in mediation</p> <p>19 sessions outside of the presence of Judge Peck?</p> <p>20 A. Yes.</p> <p>21 Q. And during any of those sessions was</p> <p>22 the subject of the FGIC Settlement Agreement</p> <p>23 discussed?</p> <p>24 A. Yes.</p> <p>25 Q. Who was present at those discussions?</p>	<p>1 L. Kruger</p> <p>2 MR. EGGERMANN: I'm going to</p> <p>3 interpose an objection, in my view of the</p> <p>4 dynamics that occurred during the mediation</p> <p>5 were probably within the ambit of the</p> <p>6 court's order. And a lot of the questions</p> <p>7 that are being asked seems to be designed</p> <p>8 to elicit the dynamics which, to me, are</p> <p>9 not far off from the substance of the</p> <p>10 mediation.</p> <p>11 BY MS. EATON:</p> <p>12 Q. Would you answer the question,</p> <p>13 please, Mr. --</p> <p>14 A. Do you want to repeat it again for</p> <p>15 me.</p> <p>16 MS. EATON: Could you read the</p> <p>17 question back, please.</p> <p>18 (The Record was Read.)</p> <p>19 BY MS. EATON:</p> <p>20 Q. Who was present at those discussions?</p> <p>21 A. My counsel. In each session, I don't</p> <p>22 recall. My counsel certainly in each session.</p> <p>23 Q. Was counsel for any of the trustees</p> <p>24 present during those discussions?</p> <p>25 MR. KERR: Objection.</p>

1 L. Kruger
2 A. I believe that counsel for the
3 trustees may have been present during some of
4 those sessions.
5 Q. Was that Mr. Siegel that you're
6 referring to?
7 A. Yes.
8 Q. By the way, was Mr. Siegel
9 representing all of the trustees during those
10 discussions, do you know?
11 A. I have no idea.
12 Q. Well, did you have a sense of what
13 his role was?
14 MR. KERR: Objection.
15 A. No.
16 Q. You had no idea one way or the other
17 whether he was speaking only on behalf of the
18 Bank of New York or anybody else?
19 MR. KERR: Objection.
20 A. I don't know.
21 Q. You didn't inquire?
22 A. No.
23 Q. It didn't matter to you?
24 A. No.
25 MR. KERR: Objection. Come on.

1 L. Kruger
2 BY MS. EATON:
3 Q. Did you have any discussions about
4 the -- prior to May 23, 2013, did you have any
5 discussions with anyone, apart from your
6 outside counsel, about the commutation aspect
7 of the FGIC Settlement Agreement?
8 A. Yes.
9 Q. Who did you have those discussions
10 with?
11 A. Judge Peck.
12 Q. So you discussed the commutation
13 aspect of the agreement with Judge Peck?
14 A. Yes.
15 Q. Did you discuss the commutation
16 aspect of the agreement with anyone else,
17 again, leaving the debtor's counsel aside?
18 A. Unsecured Creditors' Committee
19 counsel.
20 Q. Who was that?
21 A. Kramer Levin.
22 Q. Anyone else?
23 A. I think not.
24 Q. How about Cathy Patrick? Did you
25 ever discuss that issue with her?

1 L. Kruger
2 A. I don't recall.
3 Q. So maybe you did, maybe you didn't;
4 you just don't remember?
5 MR. KERR: Objection.
6 BY MS. EATON:
7 Q. I'm trying to clarify whether you
8 don't remember that having happened or you
9 don't remember one way or the other?
10 A. I don't remember one way or the
11 other.
12 Q. Was this more than one discussion,
13 was it one discussion, do you recall?
14 A. Is your question how often I spoke to
15 Cathy Patrick?
16 Q. No. We were discussing whether you
17 had had any discussions about the commutation
18 aspect of the settlement agreement. And I
19 asked you with whom did you have those
20 discussions, and you named a variety of people.
21 Was there more than one such
22 discussion?
23 A. Yes.
24 Q. And were the same people present at
25 each of those discussions?

1 L. Kruger
2 A. Certainly Unsecured Creditors'
3 Committee counsel, my own counsel.
4 Q. Okay.
5 But not Judge Peck?
6 A. I think you asked whether or not
7 these were conversations outside of the
8 presence of Judge Peck.
9 Q. Actually, that's not my --
10 A. I'm confused.
11 Q. Okay. That's fine.
12 A. But if your question was Judge Peck
13 present at those.
14 Q. Yes.
15 A. Sometimes yes, sometimes no.
16 Q. Sometimes yes, sometimes no. Okay.
17 During those conversations when Judge
18 Peck was not present, what did you discuss with
19 the others about the commutation aspect of the
20 FGIC Settlement Agreement?
21 MR. KERR: I'm going to object, and I
22 guess we -- that is within the
23 confidentiality order of the mediation.
24 And I'll direct the witness not to
25 answer.

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<p>1 L. Kruger</p> <p>2 BY MS. EATON:</p> <p>3 Q. Did you have any discussions about</p> <p>4 any aspect of the FGIC Settlement Agreement</p> <p>5 outside the mediation process, as you defined</p> <p>6 it earlier in your testimony?</p> <p>7 A. No.</p> <p>8 Q. Was every discussion that you had</p> <p>9 about the FGIC Settlement Agreement part of the</p> <p>10 mediation process, so far as you understand?</p> <p>11 A. I believe so.</p> <p>12 Q. And that would include the</p> <p>13 discussions that you had with the board of</p> <p>14 directors of the debtor's, is that part of the</p> <p>15 mediation process, too?</p> <p>16 A. I believe so.</p> <p>17 Q. Did you have any discussions about</p> <p>18 the plan support agreement outside of the</p> <p>19 mediation process?</p> <p>20 A. No.</p> <p>21 Q. Did you have any discussions with</p> <p>22 anybody about the Chapter 11 cases more</p> <p>23 generally outside of the mediation process?</p> <p>24 MR. KERR: Objection. I'll let him</p> <p>25 answer this question, but this deposition</p>	<p>1 L. Kruger</p> <p>2 is about the FGIC settlement, not about</p> <p>3 border plan issues.</p> <p>4 So you can answer that question if</p> <p>5 you can.</p> <p>6 THE WITNESS: Could you read it for</p> <p>7 me.</p> <p>8 (The Record was Read.)</p> <p>9 A. Other than my counsel, no.</p> <p>10 Q. Did you draw any distinction in your</p> <p>11 own mind between discussions during this period</p> <p>12 of time, that is, between the time you were</p> <p>13 appointed as chief restructuring officer and</p> <p>14 May 23, 2013?</p> <p>15 Let me back up so I get a clean</p> <p>16 question.</p> <p>17 My question that I'm about to ask you</p> <p>18 relates to the period between the time that you</p> <p>19 were appointed as chief restructuring officer</p> <p>20 and May 23, 2013.</p> <p>21 Okay?</p> <p>22 A. Okay.</p> <p>23 Q. That's the time period we're talking</p> <p>24 about.</p> <p>25 Did you draw any distinction in your</p>
Page 52	Page 53
<p>1 L. Kruger</p> <p>2 own mind between discussions that were part of</p> <p>3 the mediation process and discussions that were</p> <p>4 not part of the mediation process?</p> <p>5 A. I think I had mediation conversations</p> <p>6 and conversations with my counsel and advisors</p> <p>7 and nothing else.</p> <p>8 Q. And they were all part of the</p> <p>9 mediation process?</p> <p>10 A. I believe so.</p> <p>11 Q. And I may have asked you this</p> <p>12 question before. If I did, I apologize, but</p> <p>13 even if I did, I don't think I quite got an</p> <p>14 answer.</p> <p>15 You used the phrase "mediation</p> <p>16 process." What does that phrase mean to you?</p> <p>17 A. It meant the process initiated by the</p> <p>18 court who appointed Judge Peck as a mediator,</p> <p>19 and meetings both with Judge Peck and without</p> <p>20 Judge Peck as part of the process seeking a</p> <p>21 global resolution of the issue.</p> <p>22 Q. So would it be fair to say anything</p> <p>23 that you discussed that had any relation to a</p> <p>24 potential resolution of a Chapter 11 cases fell</p> <p>25 within the rubric of the mediation process?</p>	<p>1 L. Kruger</p> <p>2 A. I believe so.</p> <p>3 Q. You had no role in negotiating any of</p> <p>4 the terms of the FGIC Settlement Agreement; is</p> <p>5 that correct?</p> <p>6 A. That is correct.</p> <p>7 Q. What analysis, if any, did you</p> <p>8 undertake on behalf of the debtors to determine</p> <p>9 whether the FGIC Settlement Agreement was in</p> <p>10 their best interest?</p> <p>11 A. Well, I was aware of the fact that</p> <p>12 the FGIC Settlement Agreement was part of the</p> <p>13 global settlement agreement reached by the</p> <p>14 various parties who were parties to the</p> <p>15 mediation process.</p> <p>16 And I recognized in reaching the</p> <p>17 conclusion that I reached on behalf of the</p> <p>18 debtors, which is the respective that I have</p> <p>19 with respect to these issues, that reducing the</p> <p>20 claims that might be asserted against the</p> <p>21 debtors both by FGIC and by the trusts was a</p> <p>22 significant step forward on behalf of the</p> <p>23 debtor's estates, and as part of the overall</p> <p>24 global settlement it enabled us to both achieve</p> <p>25 an Ally contribution of significance, enabled</p>

<p style="text-align: right;">Page 54</p> <p>1 L. Kruger</p> <p>2 us to avoided significant litigation with</p> <p>3 respect to the FGIC and the trusts, enabled us</p> <p>4 to come to the conclusion where we might</p> <p>5 actually accomplish a reorganization plan and</p> <p>6 have that confirmed, rather than the</p> <p>7 alternative, which looked to me to be an</p> <p>8 endless litigation at great cost to the estate,</p> <p>9 no Ally contribution and a diminution of value</p> <p>10 to the creditors generally of the estates.</p> <p>11 Q. Did anyone on behalf of the debtors</p> <p>12 perform any kind of economic analysis of the</p> <p>13 impact of the FGIC Settlement Agreement?</p> <p>14 A. Sure.</p> <p>15 Q. Who did that?</p> <p>16 A. FTI and Centerview, my financial</p> <p>17 advisors and the debtors.</p> <p>18 Q. Anyone else?</p> <p>19 A. No.</p> <p>20 Q. Did FTI analyze the impact of the</p> <p>21 FGIC settlement agreement on anyone other than</p> <p>22 the debtors?</p> <p>23 MR. KERR: I'm not sure I understood</p> <p>24 the question.</p> <p>25 Do you understand the question?</p>	<p style="text-align: right;">Page 55</p> <p>1 L. Kruger</p> <p>2 A. Why don't you repeat the question so</p> <p>3 I can answer it.</p> <p>4 MR. KERR: I'm not sure I understand</p> <p>5 the question.</p> <p>6 BY MS. EATON:</p> <p>7 Q. You indicated that FTI and Clearview</p> <p>8 undertook an analysis of the FGIC Settlement</p> <p>9 Agreement with respect to its impact on the</p> <p>10 debtors; right?</p> <p>11 MR. KERR: Objection.</p> <p>12 Mischaracterizes the testimony.</p> <p>13 BY MS. EATON:</p> <p>14 Q. Is that incorrect, Mr. Kruger?</p> <p>15 A. Why don't you go back and read my</p> <p>16 original question and my answer.</p> <p>17 Q. What did FT --</p> <p>18 A. I don't want to speculate as to</p> <p>19 whether I answered the second one.</p> <p>20 Q. Fine.</p> <p>21 What did FTI -- what work did FTI</p> <p>22 perform for on behalf of the debtors with</p> <p>23 respect to FGIC Settlement Agreement?</p> <p>24 MR. KERR: Objection. Mr. Kruger,</p> <p>25 let me just state my objection.</p>
<p style="text-align: right;">Page 56</p> <p>1 L. Kruger</p> <p>2 Work that FTI was doing on behalf of</p> <p>3 the debtors is both subject to work product</p> <p>4 and potentially attorney-client</p> <p>5 communications with counsel, and may be</p> <p>6 subject of the confidentiality order.</p> <p>7 So in answering this question, if you</p> <p>8 could describe in very general terms</p> <p>9 whether they did or not, but without giving</p> <p>10 the particulars, I'll let you answer the</p> <p>11 question.</p> <p>12 A. Well, they produced -- I guess what I</p> <p>13 would say is that they produced analysis of</p> <p>14 various aspects of the creditor committees</p> <p>15 claims, including the FGIC settlement, as part</p> <p>16 of the mediation process.</p> <p>17 Q. Is that reflected in any written</p> <p>18 document?</p> <p>19 A. I think so.</p> <p>20 Q. And that's a document that you saw?</p> <p>21 A. As part of the mediation process,</p> <p>22 yes.</p> <p>23 Q. Okay.</p> <p>24 Was there more than one iteration of</p> <p>25 that document?</p>	<p style="text-align: right;">Page 57</p> <p>1 L. Kruger</p> <p>2 A. I don't recall.</p> <p>3 Q. What work did Centerview perform</p> <p>4 by -- for or on behalf of the debtors in</p> <p>5 connection with the FGIC Settlement Agreement?</p> <p>6 MR. KERR: Again, the same --</p> <p>7 debtor's view is that the work that</p> <p>8 Centerview was doing is work product</p> <p>9 potentially subject to privilege and</p> <p>10 subject to confidentiality.</p> <p>11 So if you could describe in just</p> <p>12 general terms if they -- what you recall if</p> <p>13 anything they did, that's fine, but nothing</p> <p>14 more than that.</p> <p>15 A. I'm not sure that they produced a</p> <p>16 document.</p> <p>17 Q. Did either FTI or Clearview perform</p> <p>18 any analysis of the amount of the commutation</p> <p>19 payment provided for under the FGIC Settlement</p> <p>20 Agreement?</p> <p>21 A. In looking at -- looking at</p> <p>22 allocations of recoveries for creditors, we</p> <p>23 took into consideration commutation payment,</p> <p>24 but we did not analyze whether there was a</p> <p>25 correct number or not a correct number. That</p>

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<p>1 L. Kruger 2 was not our purview. 3 Q. You undertook no analysis of whether 4 the amount of the commutation payment was 5 significant from the point of view of persons, 6 entities other than the debtors; correct? 7 MR. KERR: Objection. 8 A. We did not undertake any analysis 9 like that. 10 Q. Did you discuss that issue with 11 anyone? 12 MR. KERR: You can answer that 13 question -- which issue are you talking 14 about? 15 MS. EATON: The amount of the 16 commutation payment provided for under the 17 FGIC Settlement Agreement. 18 MR. KERR: Objection. Asked and 19 answered. 20 A. The answer is no. 21 Q. Did you form a view with respect to 22 the adequacy of the amount of the commutation 23 payment? 24 A. No. 25 Q. Were you aware at any point of</p>	<p>1 L. Kruger 2 whether Duff & Phelps was performing an 3 analysis of the terms of the FGIC Settlement 4 Agreement for the trustees? 5 MR. KERR: Objection. 6 BY MS. EATON: 7 Q. Do you know that was going on? 8 A. No. 9 Q. Did you know that the trustees had 10 engaged Duff & Phelps? 11 A. Yes. 12 Q. And how did you become aware of that? 13 A. Because I got to see some of their 14 bills. 15 Q. Apart from that, did you know 16 anything about what they were doing? 17 A. No. 18 Q. Did the bills reflect the kind of 19 work that they were doing? 20 A. I did not see any details. 21 Q. They were undetailed invoices? 22 A. Besides not seeing them -- 23 Q. Did you approve -- 24 A. -- I was just aware of the amounts. 25 Q. Did you have any responsibility for</p>
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<p>1 L. Kruger 2 approving those amounts? 3 A. No. 4 Q. Well, how did you come to get the 5 bills? 6 A. I heard some discussions with my 7 counsel with respect to the size of their 8 bills. 9 Q. Did you discuss the size of the 10 Duff & Phelps's bills with anyone other than 11 your counsel? 12 A. No. 13 Q. Did you discuss it with the board of 14 directors? 15 A. No. 16 Q. Was the size of the Duff & Phelps's 17 bills of any concern to the debtors? 18 MR. KERR: Objection. I'm going to 19 direct him not to answer on the grounds of 20 privilege. 21 MS. EATON: It's a "yes" or "no" 22 question. How can you direct him not to 23 answer the question? 24 MR. KERR: My direction stands. You 25 want to ask him if he had a concern, that's</p>	<p>1 L. Kruger 2 fine. 3 BY MS. EATON: 4 Q. Who paid Duff & Phelps's bills, do 5 you know? 6 A. No, I'm not sure. 7 Q. It wasn't the debtors? 8 A. I don't know. I think it may have 9 been. 10 Q. I see. 11 Who had -- in your role as CRO, were 12 you responsible for approving vendor bills? 13 A. No. 14 Q. Who was, at the -- 15 A. I don't know. 16 Q. Would you review, in your capacity as 17 CRO of the debtor's, would you review any 18 reports or whatnot about vendor payments? 19 MR. KERR: I just want to read that 20 question. 21 Objection to form. 22 MS. EATON: I think he doesn't like 23 the phrase "whatnot" that I included in my 24 question, so I guess I have to rephrase. 25</p>

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<p>1 L. Kruger</p> <p>2 BY MS. EATON:</p> <p>3 Q. What responsibility, if any, did you</p> <p>4 have in your capacity as chief restructuring</p> <p>5 officer of the debtor's with respect to the</p> <p>6 payment of vendor bills?</p> <p>7 MR. KERR: Objection. Asked and</p> <p>8 answered.</p> <p>9 A. I have not reviewed vendor bills.</p> <p>10 Q. And you did not review the Duff &</p> <p>11 Phelps's bills?</p> <p>12 A. No.</p> <p>13 Q. But you were aware of the amount?</p> <p>14 A. No.</p> <p>15 Q. Well, you were aware of generally of</p> <p>16 the size of those bills?</p> <p>17 A. No.</p> <p>18 Q. I take it you never saw any analysis</p> <p>19 that Duff & Phelps had performed?</p> <p>20 A. Correct.</p> <p>21 Q. Okay.</p> <p>22 What about Lazard? Do you know what</p> <p>23 Lazard's role was in connection with the --</p> <p>24 A. No, I do not.</p> <p>25 Q. Did you ever see any analysis</p>	<p>1 L. Kruger</p> <p>2 performed by Lazard --</p> <p>3 MR. KERR: Objection. In connection</p> <p>4 with this?</p> <p>5 MS. EATON: You objected before I had</p> <p>6 finished my question, so --</p> <p>7 MR. KERR: I apologize.</p> <p>8 MS. EATON: That's okay.</p> <p>9 BY MS. EATON:</p> <p>10 Q. Did you see any analysis performed by</p> <p>11 Lazard relating in any way to the FGIC</p> <p>12 Settlement Agreement?</p> <p>13 A. I did not.</p> <p>14 Q. Were you aware of whether Lazard was</p> <p>15 performing such an analysis?</p> <p>16 A. I was not.</p> <p>17 Q. Were you aware of whether Lazard was</p> <p>18 performing any analysis related to the planned</p> <p>19 support agreement?</p> <p>20 A. No.</p> <p>21 Q. Were you aware of whether Lazard was</p> <p>22 performing any analysis with respect to the</p> <p>23 FGIC rehabilitation plan?</p> <p>24 A. No.</p> <p>25 Q. And I take it from your answers that</p>
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<p>1 L. Kruger</p> <p>2 you never saw any analysis that Lazard prepared</p> <p>3 with respect to any of those subjects?</p> <p>4 A. Correct.</p> <p>5 Q. And I take it from that also that you</p> <p>6 have no idea one way or another whether</p> <p>7 Lazard's conclusions were with respect to those</p> <p>8 subjects?</p> <p>9 A. Correct.</p> <p>10 Q. You didn't learn it from anybody else</p> <p>11 or a discussion, for example?</p> <p>12 A. No, I did not.</p> <p>13 Q. Okay.</p> <p>14 MS. EATON: This will be Kruger</p> <p>15 Exhibit 2.</p> <p>16 (Kruger's Exhibit 2, Document</p> <p>17 entitled Declaration of Lewis Kruger, was</p> <p>18 marked for identification.)</p> <p>19 (A Discussion was Held off the</p> <p>20 Record.)</p> <p>21 MS. EATON: This is a document</p> <p>22 entitled, "Declaration of Lewis Kruger in</p> <p>23 Support of Debtor's Motion for an Order</p> <p>24 under Bankruptcy Code Sections 1 through 5A</p> <p>25 and 363B Authorizing the Debtors to enter</p>	<p>1 L. Kruger</p> <p>2 into and Perform under a Planned Support</p> <p>3 Agreement with Ally Financial, Inc., the</p> <p>4 Creditors' Committee and Certain Consenting</p> <p>5 Claimants."</p> <p>6 BY MS. EATON:</p> <p>7 Q. Do you recognize Kruger Exhibit 2,</p> <p>8 Mr. Kruger?</p> <p>9 A. Yes, I do.</p> <p>10 Q. This is your declaration?</p> <p>11 A. Yes, it is.</p> <p>12 Q. And you were aware that this</p> <p>13 declaration was filed with the Bankruptcy Court</p> <p>14 in connection with the Chapter 11 cases?</p> <p>15 A. Yes.</p> <p>16 Q. And did you read this declaration</p> <p>17 carefully before you signed it?</p> <p>18 A. Yes, I did.</p> <p>19 Q. And, to the best of your knowledge,</p> <p>20 is there anything inaccurate or untrue in this</p> <p>21 declaration?</p> <p>22 A. Not that I am aware of.</p> <p>23 Q. Okay.</p> <p>24 Now, turning your attention, first of</p> <p>25 all, to paragraph 2, which is on unnumbered</p>

1 L. Kruger
2 page 1 of Exhibit 2.
3 Do you have that?
4 A. Yes.
5 Q. It says there, "I offer this
6 declaration to show that the debtor's decision
7 to enter into the plan support agreement was a
8 sound exercise of business judgment."
9 Do you see that?
10 A. Yes, I do.
11 Q. Is it the case that the
12 debtors -- well, let me back up.
13 Who exercised -- who at the debtor's
14 exercised the business judgment to enter into
15 the planned support agreement?
16 MR. KERR: And I'm going to object at
17 this point. The plan support agreement has
18 already been approved by the court. You
19 know that. That's not what this deposition
20 is about.
21 I don't know why you're asking
22 Mr. Kruger about a plan support agreement
23 that's already been approved. I'll give
24 you some latitude here, but you're using up
25 your time asking him not about the FGIC

1 L. Kruger
2 declaration. And the question is: Did the --
3 who at the debtor's exercised their business
4 judgment in determining to enter into the plan
5 support agreement?
6 A. I did.
7 Q. And did you, likewise, exercise your
8 business judgment in determining on behalf of
9 the debtor's to enter into the FGIC Settlement
10 Agreement?
11 A. Yes, I did.
12 Q. What was the -- strike that.
13 Now, please turn to paragraph 14 of
14 your declaration. Do you have that before you?
15 A. Yes, I do.
16 Q. That paragraph reads as follows.
17 Quote, "Each of the creditor groups was
18 required to participate in a give and take
19 process through the mediation. In my opinion
20 the process of good-faith negotiations
21 undertaken by all participants resulted in an
22 agreement that is in the best interests not
23 only of the debtor's but also the other
24 mediation participants, including the RMBS
25 trustees and the investors in the RMBS trusts

1 L. Kruger
2 settlement but about a plan support
3 agreement that has already been vetted and
4 approved by the court, so --
5 MS. EATON: I need to register my
6 objection to Mr. Kerr's speaking objection,
7 which he should know is completely
8 improper.
9 BY MS. EATON:
10 Q. Could you please answer my question,
11 Mr. Kruger?
12 A. My business judgment.
13 Q. Not the board of directors?
14 A. Both. They --
15 Q. So the board of directors exercised
16 their business --
17 A. They exercised their judgment by
18 authorizing me to proceed with the FGIC
19 settlement. I think I've said that before.
20 It's still true.
21 Q. This is about the plan support
22 agreement, sir. So let me just get -- let's
23 get a clean question and answer on the record.
24 I've drawn your attention to the
25 first sentence of paragraph 2 of your

1 L. Kruger
2 and all other creditors of the debtor's
3 estates," period, close quote.
4 Do you see that?
5 A. Yes, I do.
6 Q. What was your basis for testifying
7 that the agreement was in the best interests of
8 the investors of the RMBS trusts?
9 MR. KERR: And I'm going to, again,
10 object that your questioning relates to the
11 plan support agreement. And I think it's
12 improper. Mr. Kruger can answer, but I
13 think this is an improper inquiry in this
14 deposition.
15 MS. EATON: I disagree.
16 BY MS. EATON:
17 Q. Please answer the question,
18 Mr. Kruger.
19 A. In my opinion, looking at it from the
20 perspective of as chief restructuring officer
21 of the debtor's estates, and taking into
22 consideration all the other interests of the
23 interested parties, I believe that the
24 combination of the work that had been done
25 during the mediation process under Judge Peck's

1 L. Kruger
2 direction, together with the Ally contribution
3 and -- resulted in an availability of funds for
4 all parties far greater than would have been
5 the case had there been no global plan
6 settlement, no PSA, and the result would have
7 been, had there not been, significant
8 litigation among the creditors, among
9 themselves, creditors and the debtor, no Ally
10 contribution.

11 And my personal opinion would be and
12 my business judgment was that if we ended up in
13 that situation, there was a very little
14 likelihood of a distribution to creditors for
15 years to come and that this estate would be
16 diminished significantly by the cost of that
17 litigation.

18 So, for me, it was very easy to think
19 this transaction was in the best interest, both
20 of the -- of all of the creditors of the
21 debtor's estates, as well as the investors.

22 Q. And by "transaction" you mean all of
23 the transactions contemplated by what you've
24 defined in your declaration in paragraph 5 as
25 the agreement; right?

1 L. Kruger

2 A. Yes.

3 Q. In other words, the plan support
4 agreement, the planned term sheet, and the
5 supplemental term sheet?

6 A. Correct.

7 Q. And you formed a business judgment,
8 if I understand your testimony correctly, that
9 that agreement, comprised of at least those
10 three elements, was in the best interests of
11 the investors in the RMBS trusts?

12 A. Correct.

13 Q. But you never did any analysis of the
14 impact of that agreement on those investors;
15 correct?

16 MR. KERR: Objection.

17 Mischaracterizes testimony. He testified
18 what he did.

19 A. Want to repeat the question.

20 Q. I'll ask a new question.

21 What analysis, if any, did you do of
22 the impact of the agreement defined in
23 paragraph 5 of your declaration on the
24 investors of the RMBS trusts?

25 MR. KERR: Objection. Asked and

1 L. Kruger
2 answered.

3 A. I consulted both with my counsel, my
4 advisors, Unsecured Creditors' Committee
5 counsel, their advisors. I claim to the
6 conclusion which I just restated, which is that
7 I believe that the benefits for the
8 participants in the estates is far greater as a
9 result of the global settlement provided for in
10 paragraph 5, as you described it, than the
11 alternatives would have been for those same
12 creditors.

13 Q. But you did not consult with either
14 the investors in the RMBS trusts or anyone
15 representing the investors in the RMBS trusts;
16 correct?

17 MR. KERR: Objection.

18 A. As part of the global mediation
19 process, over the course of the months I had
20 presentations made to me by various of the
21 parties to the mediation and learned from those
22 presentations the views of the various
23 participating parties. That informed me and
24 helped my decision-making process.

25 Q. Who was representing the interests of

1 L. Kruger
2 the investors in the RMBS trusts during those
3 discussions you just referenced?

4 A. I assumed the trusts do that.

5 Q. But you didn't know?

6 A. No.

7 Q. Did you actually speak with anyone
8 representing the trusts about the impact of the
9 agreement on the investors in the RMBS trusts?

10 A. No.

11 Q. You spoke, instead, with your
12 counsel, the debtor's advisors and advisors to
13 the creditors' committee?

14 MR. KERR: Objection.

15 Mischaracterizes testimony.

16 BY MS. EATON:

17 Q. Isn't that right?

18 MR. KERR: Objection.

19 A. Over the course of the months, I
20 spoke with any of the mediation participants.

21 Q. There was nobody representing the
22 investors in the RMBS trusts, the wrapped
23 trusts at the mediation; isn't that true?

24 MR. KERR: Objection.

25 A. I'm not sure I understand your

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<p>1 L. Kruger</p> <p>2 question. If your question -- I'm not sure I</p> <p>3 understand your question.</p> <p>4 Q. Who, if anyone, represented the</p> <p>5 interests of investors in the FGIC wrapped RMBS</p> <p>6 trusts at the mediation?</p> <p>7 MR. KERR: Objection.</p> <p>8 A. I believe the trustees do that.</p> <p>9 Q. But you never spoke to the -- if I</p> <p>10 understand your testimony correctly, you never</p> <p>11 spoke with those people about the impact of the</p> <p>12 agreement on investors in the RMBS trusts?</p> <p>13 A. That's correct.</p> <p>14 Q. You spoke, instead, I think you said</p> <p>15 with other people?</p> <p>16 A. Uh-huh.</p> <p>17 Q. And none of those other people were</p> <p>18 representing the interests of those investors;</p> <p>19 isn't that so?</p> <p>20 A. Correct.</p> <p>21 Q. So with respect to the interests of</p> <p>22 investors in the FGIC wrapped securities, what</p> <p>23 was the basis for your sworn conclusion that</p> <p>24 the agreement was in their best interests?</p> <p>25 A. Because I thought that --</p>	<p>1 L. Kruger</p> <p>2 MR. KERR: Objection. Asked and</p> <p>3 answered several times.</p> <p>4 Tell her again.</p> <p>5 BY MS. EATON:</p> <p>6 Q. Just -- I haven't. It's with respect</p> <p>7 to the -- this specific question is with</p> <p>8 respect to the interests of investors in the</p> <p>9 FGIC wrapped securities. Okay.</p> <p>10 What was the basis for your</p> <p>11 conclusion set forth in the declaration that</p> <p>12 you swore to that was signed with the court</p> <p>13 that the agreement was in their best interests?</p> <p>14 MR. KERR: Objection. Asked and</p> <p>15 answered.</p> <p>16 A. That in my review of all of the facts</p> <p>17 and circumstances arising all of the mediation,</p> <p>18 I believed that the global settlement produced</p> <p>19 a result for every creditor far better than the</p> <p>20 alternatives. And I include the Ally</p> <p>21 settlement and weigh that against the prospect</p> <p>22 of endless litigation, administration of the</p> <p>23 estate, no Ally contribution, I conclude that</p> <p>24 the result of the global settlement agreement</p> <p>25 was for the benefit of every creditor of the</p>
Page 76	Page 77
<p>1 L. Kruger</p> <p>2 estate.</p> <p>3 Q. Were those investors creditors of the</p> <p>4 estate?</p> <p>5 A. No. They're investors in the RMBS</p> <p>6 trusts.</p> <p>7 Q. Right.</p> <p>8 So, again, what was the basis for</p> <p>9 your conclusion that the agreement was in the</p> <p>10 best interests of that group of people --</p> <p>11 wait -- that group of people who we agree were</p> <p>12 not among the creditors of the estate?</p> <p>13 MR. KERR: Objection. Asked and</p> <p>14 answered.</p> <p>15 A. I still believe, and I'll say it</p> <p>16 again, that for everybody, including the</p> <p>17 investors in the RMBS trusts, had there been</p> <p>18 no -- is if there is no global settlement and</p> <p>19 litigation ensues with respect to the</p> <p>20 inter-creditor issues and there is no Ally</p> <p>21 contribution and passage of time and the cost</p> <p>22 of that litigation, there will be a much lesser</p> <p>23 recovery for all participants, including the</p> <p>24 investors in the RMBS trusts.</p> <p>25 Q. Any other basis for the conclusion</p>	<p>1 L. Kruger</p> <p>2 you swore to in your declaration we've marked</p> <p>3 as Kruger Exhibit 2?</p> <p>4 A. No.</p> <p>5 MR. KERR: Mary, we've been maybe</p> <p>6 we've been going about an hour and a half,</p> <p>7 when you come to a point, we can maybe just</p> <p>8 take a five-minute break.</p> <p>9 MS. EATON: If you'd like to take a</p> <p>10 break now, that would be fine.</p> <p>11 MR. KERR: Sure. Let's just take a</p> <p>12 break.</p> <p>13 (Recess taken from 11:22 a.m. to</p> <p>14 11:30 a.m.)</p> <p>15 BY MS. EATON:</p> <p>16 Q. Did you ever discuss with Judge Peck</p> <p>17 who the -- the prospect of having other people</p> <p>18 participate in the mediation?</p> <p>19 A. No.</p> <p>20 Q. Do you know who decided which</p> <p>21 constituencies were permitted to -- sorry --</p> <p>22 permitted to participate in the mediation?</p> <p>23 A. Judge Peck.</p> <p>24 Q. Would you agree that the FGIC</p> <p>25 Settlement Agreement was a critical component</p>

1 L. Kruger
2 of the agreement referenced in the declaration
3 we've marked as Kruger Exhibit 2?
4 MR. KERR: Objection.
5 A. It was one of many elements of the
6 global settlement.
7 Q. Okay.
8 But do you agree that it was a
9 critical component of the global settlement?
10 MR. KERR: Objection.
11 A. Each consenting creditor was a
12 critical part of the transaction.
13 Q. So --
14 (Kruger's Exhibit 3, Declaration of
15 Lewis Kruger, was marked for
16 identification.)
17 BY MS. EATON:
18 Q. Let's take a look at the document
19 that we've marked as Kruger Exhibit 3, which is
20 another declaration you filed in these Chapter
21 11 cases entitled, "Declaration of Lewis Kruger
22 in Support of Debtor's Motion Pursuant to
23 Federal Rules of Bankruptcy Procedure 9019 for
24 the Approval of the Settlement Agreement among
25 the Debtors, FGIC, for FGIC Trustees and

1 L. Kruger
2 that the debtors negotiated the settlement
3 agreement at arm's length without undue
4 influence or coercion by any party."
5 Do you see that?
6 A. Yes, I do.
7 Q. Now, it says there that the debtors
8 negotiated the settlement agreement.
9 Do you see that?
10 A. Yes.
11 Q. I may have misunderstood you, but I
12 thought you had testified previously that the
13 debtors did not negotiate the FGIC Settlement
14 Agreement?
15 A. If that's what I said before, that's
16 not accurate. We did.
17 Q. Who negotiated the FGIC Settlement
18 Agreement on behalf of the debtors?
19 A. My counsel and myself.
20 Q. And yourself. Okay.
21 When did you -- at what point in time
22 did you negotiate the terms of the FGIC
23 Settlement Agreement?
24 A. During the process of the mediation.
25 Q. Can you be more precise about --

1 L. Kruger
2 Certain Institutional Investors."
3 Do you see that?
4 A. Yes.
5 Q. And, again, that is a declaration
6 that you swore; right?
7 A. Yes.
8 Q. And you read it carefully before you
9 signed it?
10 A. Yes, I did.
11 Q. And you don't have any reason to
12 believe that there's anything in that
13 declaration that is not true and accurate, do
14 you?
15 A. Correct.
16 Q. Okay.
17 Now, if you draw your attention to
18 paragraph 2, which appears on page 1 of your
19 declaration, you state, quote, "I offer this
20 declaration to show that the settlement
21 agreement dated May 23, 2013 (the Settlement
22 Agreement) represents a fair and reasonable
23 compromise in connection with certain claims
24 held by Financial Guaranty Insurance Company
25 (FGIC) and the FGIC Trustees, and to attest

1 L. Kruger
2 about when that occurred?
3 A. During the months of April and May of
4 2013.
5 Q. And while you were negotiating the
6 terms of the FGIC Settlement Agreement, did you
7 see drafts of the agreement?
8 A. Yes.
9 Q. So you saw drafts of the document
10 that we've marked as Kruger Exhibit 1; is that
11 right?
12 MR. KERR: Take a look Kruger
13 Exhibit 1.
14 A. Yes.
15 Q. All right then.
16 So in addition to the two documents
17 you identified earlier in your testimony, that
18 is, the final version of the settlement
19 agreement which is marked as Kruger Exhibit 1
20 and the term sheet that you referenced
21 previously, you saw additional documents
22 regarding the terms or proposed terms of the
23 FGIC Settlement Agreement, true?
24 MR. KERR: Objection.
25 A. I think before the final settlement

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<p>1 L. Kruger</p> <p>2 agreement was executed, there were drafts</p> <p>3 before that.</p> <p>4 Q. In other words, there were more than</p> <p>5 the two documents --</p> <p>6 A. There may have been. I don't recall.</p> <p>7 Q. You don't recall -- is it the case</p> <p>8 that you don't recall whether you saw documents</p> <p>9 other than the two documents that --</p> <p>10 A. I think that's correct.</p> <p>11 Q. You need to let me finish my</p> <p>12 question, if you don't mind. Nothing personal.</p> <p>13 He just needs to get it down.</p> <p>14 A. Sorry.</p> <p>15 Q. So now you're not clear whether you</p> <p>16 saw drafts of it or not?</p> <p>17 A. Right.</p> <p>18 Q. Is that right?</p> <p>19 MR. KERR: Lew, let Ms. Eaton finish</p> <p>20 her question and then you can -- that way</p> <p>21 he gets to take it down. I apologize.</p> <p>22 BY MS. EATON:</p> <p>23 Q. I'm just trying to find out whether</p> <p>24 there were other documents. First you said</p> <p>25 there were only those two. Then you said you</p>	<p>1 L. Kruger</p> <p>2 saw another draft of Exhibit 1 --</p> <p>3 MR. KERR: Let her finish the</p> <p>4 question.</p> <p>5 BY MS. EATON:</p> <p>6 Q. Did you see -- I have to ask you</p> <p>7 again. Did you see, given the lack of clarity</p> <p>8 in your testimony, did you see any other --</p> <p>9 MR. KERR: Objection.</p> <p>10 MS. EATON: Please don't inter -- you</p> <p>11 can object after I finish my question.</p> <p>12 MR. KERR: Don't characterize his</p> <p>13 testimony that way. Don't do it.</p> <p>14 Let her ask the question.</p> <p>15 MS. EATON: He's letting me ask the</p> <p>16 question. You are not.</p> <p>17 BY MS. EATON:</p> <p>18 Q. Did you see any other documents</p> <p>19 besides the term sheet that you referenced</p> <p>20 earlier in your testimony and the final version</p> <p>21 of the FGIC Settlement Agreement?</p> <p>22 A. I don't think so.</p> <p>23 Q. Okay.</p> <p>24 But it is the case that you</p> <p>25 participated in negotiating the terms of that</p>
Page 84	Page 85
<p>1 L. Kruger</p> <p>2 agreement; right?</p> <p>3 A. Correct.</p> <p>4 Q. Did you participate in negotiating</p> <p>5 the amount of the commutation payment?</p> <p>6 A. No.</p> <p>7 Q. Are there particular aspects of the</p> <p>8 agreement that you participated in negotiating?</p> <p>9 MR. KERR: Objection. On that, I am</p> <p>10 going to direct him not to answer the</p> <p>11 confidential --</p> <p>12 BY MS. EATON:</p> <p>13 Q. Okay.</p> <p>14 Could you please turn to page 6 of</p> <p>15 your declaration, paragraph 14.</p> <p>16 A. Yes.</p> <p>17 Q. And it reads there, quote, "Following</p> <p>18 the court's appointment of United States</p> <p>19 Bankruptcy Judge James M. Peck as mediator and</p> <p>20 months of arm's length negotiations, the</p> <p>21 debtors and most of their claim constituencies</p> <p>22 reached a broad settlement set forth in the</p> <p>23 global plan agreement. The settlement</p> <p>24 agreement represents a critical component of</p> <p>25 the global plan agreement."</p>	<p>1 L. Kruger</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. So is it, in fact, the case that the</p> <p>5 FGIC Settlement Agreement was a critical</p> <p>6 component --</p> <p>7 A. Yes.</p> <p>8 Q. -- of the global plan agreement?</p> <p>9 A. Yes.</p> <p>10 Q. And the global plan agreement is</p> <p>11 defined in your declaration as the plan support</p> <p>12 agreement, the supplemental term sheet, and the</p> <p>13 plan term sheet; correct?</p> <p>14 A. Correct.</p> <p>15 Q. And that's the same agreement that</p> <p>16 was referenced in -- in the declaration we</p> <p>17 previously marked as Kruger Exhibit 2, I think?</p> <p>18 A. Yes.</p> <p>19 Q. So in that declaration when you</p> <p>20 stated that the agreement was in the best</p> <p>21 interests of the investors in the RMBS trusts,</p> <p>22 you were stating, were you not, that in your</p> <p>23 view the FGIC Settlement Agreement was in the</p> <p>24 best interests of those investors?</p> <p>25 MR. KERR: Objection.</p>

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1 L. Kruger
2 A. Yes.
3 Q. And you've already stated -- I've
4 already asked you and you already answered my
5 question about the basis for your conclusion in
6 that regard.
7 Do you remember that?
8 A. Yes.
9 Q. Do you have anything to add to your
10 answer about the basis for that conclusion?
11 MR. KERR: Objection.
12 A. No.
13 Q. Okay.
14 Let's move on to Kruger Exhibit 4.
15 (Kruger's Exhibit 4, Order Granting
16 Debtor's Motion Pursuant to Rule 9019,
17 was marked for identification.)
18 BY MS. EATON:
19 Q. This is another document that's been
20 filed in connection with these Chapter 11 cases
21 entitled, "Order Granting Debtor's Motion
22 Pursuant to Rule 9019 for Approval of the
23 Settlement Agreement among FGIC, the Debtors,
24 the Trustees and the Institutional Investors."
25 Do you see that?

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1 L. Kruger
2 A. I do.
3 Q. In what respect was the settlement
4 agreement in the best interest of the trustees?
5 A. I assumed -- I shouldn't say I
6 assume. Pardon.
7 It's to the benefit of the trustees,
8 I assume, because they've satisfied their
9 fiduciary duty to their constituency.
10 Q. Do you have any basis to believe that
11 they did so?
12 A. The trustees are among the largest
13 financial institutions in the United States.
14 They were well-represented by counsel and
15 advisors. I can only assume that they acted in
16 the best interests of those whom they represent
17 as trustees.
18 Q. But it's just an assumption on your
19 part; correct?
20 MR. KERR: Objection.
21 A. Well, beyond that, I continue to
22 believe that it's in the best interest of all
23 the parties, including the trustees, that there
24 be a global settlement, that the global
25 settlement has the benefit of the Ally

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1 L. Kruger
2 A. Yes.
3 Q. Have you seen this document before?
4 A. Yes, I have.
5 Q. Did you have any input into its
6 contents?
7 A. No.
8 Q. Did you review the document before it
9 was filed with the court?
10 A. Yes.
11 Q. In reviewing the document, did you --
12 was there anything that you saw that you did
13 not agree with?
14 A. No.
15 Q. Now, you'll notice in paragraph C at
16 page 2, there's a sentence which reads, quote,
17 "The settlement agreement and the transactions
18 contemplated thereby, including the releases
19 given therein, are in the best interests of the
20 debtors, their estates, the creditors, the
21 investors in each trust -- each such trust, the
22 trustee and all other parties in interest."
23 Do you see that?
24 A. Yes.
25 Q. And you agree with that statement?

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1 L. Kruger
2 contribution, eliminates years of struggling in
3 litigation, complex and costly, and results in
4 a recovery for all parties that is far better
5 than the alternative.
6 That, I think, encompasses both the
7 debtors, their estates, their creditors, the
8 investors in each trust, each trust and the
9 trustees.
10 Q. What interest do the trustees, as
11 opposed to the trusts or the investors in the
12 trusts, have in the outcome of this dispute?
13 MR. KERR: Objection.
14 BY MS. EATON:
15 Q. Do you know?
16 A. Well, I assume that they are -- I
17 should not assume.
18 No, I don't.
19 Q. Now, let's turn to Paragraph D, which
20 states, quote, "The trustees acted reasonably
21 in good faith and in the best interest of the
22 investors in each trust and each such trust in
23 agreeing to the settlement agreement," period,
24 close quote.
25 Do you see that?

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<p>1 L. Kruger</p> <p>2 A. Yes, I do.</p> <p>3 Q. Do you agree with that statement?</p> <p>4 A. Yes, I do.</p> <p>5 Q. On what basis do you agree that the</p> <p>6 trustees acted reasonably in good faith and in</p> <p>7 the best interests of the investors in each</p> <p>8 trust?</p> <p>9 A. Well, as part of the mediation</p> <p>10 process led by Judge Peck, the trustees were an</p> <p>11 important part of that mediation process. As I</p> <p>12 said, they are among the largest financial</p> <p>13 institutions in the United States. They're</p> <p>14 experienced trustees. They have the advice of</p> <p>15 very competent counsel, financial advisors, and</p> <p>16 acted -- I saw nothing to persuade me to the</p> <p>17 contrary.</p> <p>18 I believe that they were acting in</p> <p>19 good faith and in the best interests of the</p> <p>20 investors in each trust in agreeing to the</p> <p>21 settlement agreement.</p> <p>22 Q. I thought I heard you testify</p> <p>23 previously that the only trustee,</p> <p>24 representative of the trustees that you spoke</p> <p>25 with was Mr. Siegel?</p>	<p>1 L. Kruger</p> <p>2 MR. KERR: Objection. That's not</p> <p>3 correct. Mischaracterizes testimony.</p> <p>4 BY MS. EATON:</p> <p>5 Q. Did you speak with any representative</p> <p>6 of the trustees other than Mr. Siegel during</p> <p>7 that process?</p> <p>8 MR. KERR: You're talking about the</p> <p>9 mediation process overall; is that your</p> <p>10 question?</p> <p>11 BY MS. EATON:</p> <p>12 Q. Yes.</p> <p>13 A. Just with -- I'll say no.</p> <p>14 Q. Okay.</p> <p>15 So do you have any factual basis for</p> <p>16 believing that the Bank of New York acted in</p> <p>17 the best interests of my clients in agreeing to</p> <p>18 this settlement agreement?</p> <p>19 MR. KERR: Objection. Asked and</p> <p>20 answered.</p> <p>21 BY MS. EATON:</p> <p>22 Q. Beyond what you've -- beyond what</p> <p>23 you've already testified to.</p> <p>24 A. No.</p> <p>25 Q. I'll be handing you now Exhibit -- a</p>
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<p>1 L. Kruger</p> <p>2 document we'll mark as Exhibit 5.</p> <p>3 (Kruger's Exhibit 5, Notice of</p> <p>4 Filing of Lewis Kruger's First Monthly</p> <p>5 Fee Report, Compensation for Professional</p> <p>6 Services Rendered and Reimbursement of</p> <p>7 Expenses Occurred, was marked for</p> <p>8 identification.)</p> <p>9 BY MS. EATON:</p> <p>10 Q. The document marked as Kruger</p> <p>11 Exhibit 5 is entitled "Notice of Filing of</p> <p>12 Lewis Kruger's First Monthly Fee Report,</p> <p>13 Compensation for Professional Services</p> <p>14 Rendered, And reimbursement of Expenses</p> <p>15 Occurred through the period from February 10,</p> <p>16 2013 through February 28, 2013."</p> <p>17 A. Uh-huh.</p> <p>18 Q. Do you recognize this document?</p> <p>19 A. Yes, I do.</p> <p>20 Q. These are the fee and expense reports</p> <p>21 that you would submit, that the debtors would</p> <p>22 submit periodically to the Bankruptcy Court?</p> <p>23 A. Right.</p> <p>24 Q. Okay.</p> <p>25 Now, if you flip to the second to</p>	<p>1 L. Kruger</p> <p>2 last page of Exhibit 5 which is headed</p> <p>3 Exhibit B.</p> <p>4 Do you see that it's a chart?</p> <p>5 A. Oh, yes. Sorry. Uh-huh.</p> <p>6 Q. It says Project Category</p> <p>7 Descriptions.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay.</p> <p>11 And to the left of the chart there's</p> <p>12 a heading entitled Project Category, and then a</p> <p>13 list of six categories.</p> <p>14 Do you see that?</p> <p>15 A. Uh-huh.</p> <p>16 Q. The first of which is Plan Mediation.</p> <p>17 A. Yes.</p> <p>18 Q. And the second is Plan General.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And the third is RMBS Settlement.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And the purpose of these project</p> <p>25 categories was to allocate to -- let me strike</p>

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<p>1 L. Kruger</p> <p>2 that.</p> <p>3 What was the purpose of recording</p> <p>4 your time under these different categories?</p> <p>5 MR. KERR: Objection. Assumes facts</p> <p>6 not in evidence.</p> <p>7 BY MS. EATON:</p> <p>8 Q. Did you record your time under these</p> <p>9 different categories?</p> <p>10 A. Yes, I did.</p> <p>11 Q. Why did you do that?</p> <p>12 A. I thought it would be helpful to give</p> <p>13 our creditors and other interested parties some</p> <p>14 sense of how I was spending my time.</p> <p>15 Q. And how did you differentiate between</p> <p>16 Category 1, which is Plan Mediation, and</p> <p>17 Category 2, which is Plan General?</p> <p>18 A. It's very hard to distinguish between</p> <p>19 the two of them. I did the best I could and</p> <p>20 tried to distinguish between those activities I</p> <p>21 thought were plan mediation directly and others</p> <p>22 were developing the debtor's plan of</p> <p>23 reorganization.</p> <p>24 Q. But there was a distinction in your</p> <p>25 mind between those two things?</p>	<p>1 L. Kruger</p> <p>2 A. A very fuzzy distinction.</p> <p>3 Q. Well, fuzzy or not, there was a</p> <p>4 distinction. And when these expense fee and</p> <p>5 expense reports were submitted, you allocated</p> <p>6 your time between those two categories, among</p> <p>7 others; right?</p> <p>8 MR. KERR: Objection.</p> <p>9 A. Correct.</p> <p>10 Q. And that's why, for example, you see</p> <p>11 on the previous page, which is headed Exhibit</p> <p>12 A, that you allocated 9 hours of your time to</p> <p>13 Plan Mediation and 16-1/2 hours of your time to</p> <p>14 Plan General and 6-1/2 hours of your time to</p> <p>15 the RMBS Settlement; right?</p> <p>16 A. Yes.</p> <p>17 (Recess taken from 11:52 a.m. to</p> <p>18 11:54 a.m.)</p> <p>19 (Kruger's Exhibit 6, Document,</p> <p>20 Bates Nos. FGIC 901933899 through 34122,</p> <p>21 was marked for identification.)</p> <p>22 (Kruger's Exhibit 7, Document,</p> <p>23 Bates Nos. FGIC 901933813 through 33898,</p> <p>24 was marked for identification.)</p> <p>25</p>
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<p>1 L. Kruger</p> <p>2 (Kruger's Exhibit 8, Document,</p> <p>3 Bates Nos. FGIC 901933760 through 33812,</p> <p>4 was marked for identification.)</p> <p>5 (Kruger's Exhibit 9, Document,</p> <p>6 Bates Nos. FGIC 901934123 through 34204,</p> <p>7 was marked for identification.)</p> <p>8 (Kruger's Exhibit 10, Document,</p> <p>9 Bates Nos. FGIC 901934258 through 34324,</p> <p>10 was marked for identification.)</p> <p>11 BY MS. EATON:</p> <p>12 Q. Mr. Kruger, in the interest of time</p> <p>13 during the break we've marked a series of</p> <p>14 exhibits that's numbers 6 through 10, which</p> <p>15 you're free to look at as much or as little as</p> <p>16 you like, but essentially they're a series of</p> <p>17 e-mails to the ResCap board of directors or the</p> <p>18 board of directors of the ResCap subsidiaries,</p> <p>19 attaching materials, including drafts of the</p> <p>20 PSA and things of that sort.</p> <p>21 MR. KERR: Could we just identify</p> <p>22 them so the record is clear.</p> <p>23 MS. EATON: Sure. I'm happy to do</p> <p>24 that.</p> <p>25 So Exhibit 6 is Bates stamped FGIC</p>	<p>1 L. Kruger</p> <p>2 901933899 through --</p> <p>3 (A Discussion was Held off the</p> <p>4 Record.)</p> <p>5 MS. JAMES: Exhibit 6 is FGIC 9019</p> <p>6 Bates 33899 through 34122.</p> <p>7 Exhibit 7 is FGIC 901933813 through</p> <p>8 33898.</p> <p>9 Exhibit 8 is FGIC 901933760 through</p> <p>10 33812.</p> <p>11 Exhibit 9 is FGIC 901934123 through</p> <p>12 34204.</p> <p>13 And Exhibit 10 is FGIC 901934258</p> <p>14 through 34324.</p> <p>15 MR. KERR: Great.</p> <p>16 BY MS. EATON:</p> <p>17 Q. Your name is referenced on each of</p> <p>18 these -- each of these exhibits. And I don't</p> <p>19 have very many questions to ask you about them.</p> <p>20 It would be fair to say that these</p> <p>21 are communications with the board of ResCap and</p> <p>22 its subsidiaries with respect to the agreement</p> <p>23 that we've been talking about, the plan support</p> <p>24 agreement, the term sheet, the supplemental</p> <p>25 term sheet, and the FGIC Settlement Agreement?</p>

1 L. Kruger
2 MR. KERR: Objection. You need to
3 look at each document to respond to that
4 question.
5 MS. EATON: If he needs to, he needs
6 to.
7 A. That appears to be correct.
8 Q. And these exhibits reflect what was
9 presented to those two boards with respect to
10 those agreements; correct?
11 MR. KERR: Objection.
12 A. I don't know.
13 Q. A lot of the attachments to these
14 exhibits have been redacted.
15 Are you aware of any presentations in
16 the form of PowerPoint slides or otherwise that
17 were made to the directors with respect to the
18 PSA, the term sheet, the supplemental term
19 sheet, or the FGIC Settlement Agreement?
20 A. No, I am not.
21 Q. Did you have any discussions with
22 anyone at Monarch about the FGIC Settlement
23 Agreement?
24 A. No.
25 Q. The PSA?

1 L. Kruger
2 equal, would you have entered the FGIC
3 Settlement Agreement if it did not contain a
4 FGIC commutation?
5 MR. KERR: Objection.
6 A. I'm not -- I would entered it if the
7 documents defined the releases and a reduction
8 in claims that we got. I assume that was part
9 and parcel of getting a commutation. If there
10 was no commutation and I would not have gotten
11 those releases, there would not have been a
12 settlement.
13 Q. But if you would have gotten releases
14 and everything else but just absent the
15 commutation, would you have entered the
16 settlement agreement?
17 MR. KERR: Objection. Assumes facts
18 not in evidence.
19 BY MR. CARNEY:
20 Q. It's a "yes" or "no" question.
21 A. Can you describe to me one more time
22 what the agreement is.
23 Q. The agreement is all else being
24 equal, everything else is the same, but it does
25 not contain the FGIC commutation, would you

1 L. Kruger
2 A. No.
3 Q. The FGIC rehabilitation proceedings?
4 A. No.
5 Q. Same question with respect to anyone
6 at Stonehill?
7 A. No.
8 Q. Same question with respect to anyone
9 at Bayview?
10 A. No.
11 Q. And the same question with respect to
12 anyone at CQS?
13 A. No.
14 MS. EATON: I'm reserving my rights,
15 but I'm told that other people want to take
16 the seat; so, I'm going to conclude my
17 questions for now, with the understanding
18 that I'm reserving my rights.
19 MR. CARNEY: I'll just stand. I have
20 three questions.
21
22 EXAMINATION BY MR. CARNEY:
23 Q. I'm Michael Carney from McKool Smith,
24 on behalf of Freddie Mac.
25 My first question is: All else being

1 L. Kruger
2 have entered the agreement?
3 A. But it still contains the reduction
4 in claim amounts?
5 Q. Yes.
6 MR. KERR: Objection.
7 MR. WYNNE: Objection. Improper
8 hypothetical.
9 BY MR. CARNEY:
10 Q. You can answer.
11 A. Yes.
12 Q. Okay.
13 And so, in fact, the FGIC commutation
14 aspect itself wasn't important to the debtors,
15 was it?
16 MR. KERR: Objection.
17 Mischaracterizes testimony.
18 A. It was important as part of the
19 global --
20 MR. CARNEY: Are you instructing him
21 not to answer?
22 MR. KERR: It's a highly improper
23 hypothetical question. If you can answer
24 that question not -- recognizing those
25 facts aren't what they are, without

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<p>1 L. Kruger</p> <p>2 disclosing anything from the mediation.</p> <p>3 A. Want to try your question again.</p> <p>4 Q. Certainly.</p> <p>5 The FGIC commutation aspect of the</p> <p>6 FGIC settlement -- scratch that.</p> <p>7 The FGIC commutation aspect of the</p> <p>8 FGIC settlement wasn't important to the</p> <p>9 debtors, was it?</p> <p>10 MR. KERR: Objection.</p> <p>11 Mischaracterizes his testimony.</p> <p>12 A. It was part of the global settlement,</p> <p>13 so all of that was important to us.</p> <p>14 Q. But in itself it wasn't important to</p> <p>15 the debtors if you would have gotten everything</p> <p>16 else?</p> <p>17 MR. KERR: Objection. Improper</p> <p>18 hypothetical.</p> <p>19 BY MR. CARNEY:</p> <p>20 Q. You can answer.</p> <p>21 A. Yes.</p> <p>22 Q. Why was the commutation itself</p> <p>23 important?</p> <p>24 MR. KERR: Objection.</p> <p>25 A. I thought -- I'm confused.</p>	<p>1 L. Kruger</p> <p>2 Q. You said that you would have, had you</p> <p>3 received everything else in this global</p> <p>4 settlement, you would have entered it had the</p> <p>5 FGIC commutation not been a part of it; is that</p> <p>6 correct?</p> <p>7 A. From the debtor's perspective.</p> <p>8 Q. Yes. From the debtor's perspective.</p> <p>9 A. Assuming the rest of the global</p> <p>10 settlement stayed in place --</p> <p>11 Q. Yes.</p> <p>12 A. -- and everything else was in place.</p> <p>13 Q. Yes.</p> <p>14 A. And I would have the same result in</p> <p>15 terms of the releases that would have been</p> <p>16 forthcoming?</p> <p>17 Q. Yes.</p> <p>18 A. Sounds fine to me.</p> <p>19 MR. CARNEY: All right.</p> <p>20 Those are my questions. Thank you.</p> <p>21 I'll reserve any time at the end, if</p> <p>22 there's any left.</p> <p>23 (A Discussion was Held off the</p> <p>24 Record.)</p> <p>25</p>
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<p>1 L. Kruger</p> <p>2 (Kruger's Exhibit 11, Notice of</p> <p>3 Deposition, was marked for</p> <p>4 identification.)</p> <p>5</p> <p>6 EXAMINATION BY MR. SHORE:</p> <p>7 Q. Good afternoon, Mr. Kruger. I'm</p> <p>8 Chris Shore from White & Case, on behalf of the</p> <p>9 Ad Hoc Group of Junior Secured Notes.</p> <p>10 I've handed you a document that's</p> <p>11 been marked as Kruger No. 11. Have you seen</p> <p>12 that document before?</p> <p>13 MR. WYNNE: Could you identify it?</p> <p>14 MR. SHORE: Yes. It's a Notice of</p> <p>15 Deposition of the Ad Hoc Group calling for</p> <p>16 a 30(b)(6) witness from the debtors.</p> <p>17 A. Yes.</p> <p>18 Q. And are you here today to testify on</p> <p>19 behalf of each of ResCap, LLC, which I'll call</p> <p>20 ResCap, LLC, Residential Funding Corporation,</p> <p>21 which I'll call RSC, and GMAC Mortgage, LLC,</p> <p>22 which I'll call GMACM.</p> <p>23 MR. KERR: Mr. Shore, you requested</p> <p>24 Mr. Kruger to appear at this point here.</p> <p>25 He's is prepared to testify about the</p>	<p>1 L. Kruger</p> <p>2 topics, but so --</p> <p>3 MR. SHORE: Well, no, I called for a</p> <p>4 30(b)6 witness. I asked you who you were</p> <p>5 going to provide. You said Mr. Kruger. So</p> <p>6 I'm just -- he's here as a 30(b)6 witness</p> <p>7 on behalf of each of those entities; right?</p> <p>8 MR. KERR: Correct.</p> <p>9 BY MR. SHORE:</p> <p>10 Q. Okay.</p> <p>11 And you're prepared to testify today</p> <p>12 about each of the topics which are listed on</p> <p>13 the last page of Kruger No. 11?</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 Let me clear up an authority issue</p> <p>17 from some questions from this morning.</p> <p>18 With respect to GMACM, did you obtain</p> <p>19 any specific authority from the board of GMACM</p> <p>20 to negotiate the FGIC settlement?</p> <p>21 A. The board of -- I don't -- I believe</p> <p>22 I had the authority under my engagement letter</p> <p>23 to negotiate the FGIC settlement. In addition</p> <p>24 to that, the board of ResCap certainly gave me</p> <p>25 that authority initially.</p>

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<p>1 L. Kruger</p> <p>2 Q. Okay.</p> <p>3 And with respect to RFC, do you</p> <p>4 recall getting a specific authorization from</p> <p>5 the board of RFC to authorize -- authorizing</p> <p>6 you to negotiate on behalf of RFC with respect</p> <p>7 to the FGIC claims?</p> <p>8 A. No.</p> <p>9 Q. Okay.</p> <p>10 And with respect to GMACM, did you</p> <p>11 get a specific authorization from the board of</p> <p>12 GMACM to execute the FGIC Settlement Agreement?</p> <p>13 A. No.</p> <p>14 Q. Okay.</p> <p>15 And on behalf of ResCap, LLC -- I'm</p> <p>16 sorry. On behalf of RFC, did you get a</p> <p>17 specific authorization from that board to</p> <p>18 execute the FGIC Settlement Agreement?</p> <p>19 A. I don't know.</p> <p>20 Q. Did you seek authority or did</p> <p>21 somebody seek authority on your behalf to sign</p> <p>22 that agreement, the FGIC Settlement Agreement,</p> <p>23 on behalf of GMACM and RFC?</p> <p>24 MR. KERR: Objection.</p> <p>25 A. I think I had that authority.</p>	<p>1 L. Kruger</p> <p>2 Q. And that's based upon your engagement</p> <p>3 letter?</p> <p>4 A. Yes.</p> <p>5 Q. Any other thing you're relying upon</p> <p>6 to give your testimony with respect to</p> <p>7 authority?</p> <p>8 A. I would say conversation with the</p> <p>9 board.</p> <p>10 Q. Which board?</p> <p>11 A. The board of ResCap.</p> <p>12 Q. Okay.</p> <p>13 Have you ever met with the board of</p> <p>14 GMACM in these cases?</p> <p>15 A. I don't know.</p> <p>16 Q. And do you recall ever meeting with</p> <p>17 the board of RFC in these cases?</p> <p>18 A. I don't know.</p> <p>19 Q. Do you know who is on the board of</p> <p>20 GMACM?</p> <p>21 A. No.</p> <p>22 Q. Do you know who is on the board of</p> <p>23 RFC?</p> <p>24 A. No.</p> <p>25 Q. All right.</p>
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<p>1 L. Kruger</p> <p>2 Referring to 30(b)6, Topic 2, "Any</p> <p>3 materials or analysis concerning</p> <p>4 substantive" -- no, leave that aside. I'm</p> <p>5 sorry.</p> <p>6 I want to focus first on your</p> <p>7 personal diligence with respect to any FGIC</p> <p>8 claims.</p> <p>9 To date, have you read any of the</p> <p>10 FGIC complaints that were filed prepetition?</p> <p>11 A. I've read one.</p> <p>12 Q. And which one was that?</p> <p>13 A. I don't recall which one.</p> <p>14 Q. And did you read that prior to or</p> <p>15 after executing the settlement agreement?</p> <p>16 A. Prior to.</p> <p>17 Q. And what impact, if any, did your</p> <p>18 reading of that complaint have on your decision</p> <p>19 to execute the FGIC settlement agreement?</p> <p>20 A. It was one of a number of things that</p> <p>21 I thought about in preparing and executing the</p> <p>22 FGIC agreement.</p> <p>23 Q. And how did that play into your</p> <p>24 decision?</p> <p>25 A. Well, I read it. It set forth the</p>	<p>1 L. Kruger</p> <p>2 claims that were being made by FGIC. And those</p> <p>3 informed me and they were part of the</p> <p>4 considerations that I had in terms of</p> <p>5 determining whether we should go forward with</p> <p>6 the settlement agreement.</p> <p>7 Q. To date, have you read any of FGIC's</p> <p>8 proofs of claim?</p> <p>9 A. I read one of FGIC's proofs of</p> <p>10 claims, as well.</p> <p>11 Q. And did you read that prior to or</p> <p>12 after the determination to settle?</p> <p>13 A. Prior to.</p> <p>14 Q. Okay.</p> <p>15 And did you read any of the RMBS</p> <p>16 trust claims, proofs of claim and they relate</p> <p>17 to the FGIC wrapped trusts?</p> <p>18 A. No, I did not.</p> <p>19 Q. Okay.</p> <p>20 And you haven't done that to date?</p> <p>21 A. No.</p> <p>22 Q. Did you do any independent legal</p> <p>23 research into FGIC issues at all?</p> <p>24 MR. KERR: Objection.</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 110</p> <p>1 L. Kruger</p> <p>2 MR. KERR: Are you talking about</p> <p>3 Mr. Kruger, personally?</p> <p>4 MR. SHORE: Yes. Personally. I said</p> <p>5 the, lead-in with all this, I just want his</p> <p>6 personal diligence.</p> <p>7 MR. KERR: All right.</p> <p>8 BY MR. SHORE:</p> <p>9 Q. And have you done any personal legal</p> <p>10 research into RMBS-related issues?</p> <p>11 A. No.</p> <p>12 Q. And did you have any experience in</p> <p>13 dealing with RMBS-related issues in private</p> <p>14 practice?</p> <p>15 A. No.</p> <p>16 Q. Did you talk to any existing ResCap</p> <p>17 employees about facts in their possession</p> <p>18 related to the FGIC complaint or the FGIC</p> <p>19 proofs of claim?</p> <p>20 A. No.</p> <p>21 Q. Have you reviewed any prepetition</p> <p>22 memoranda regarding the merits of the FGIC</p> <p>23 claims which have been asserted?</p> <p>24 MR. KERR: You can answer that "yes"</p> <p>25 or "no."</p>	<p style="text-align: right;">Page 111</p> <p>1 L. Kruger</p> <p>2 A. Yes.</p> <p>3 Q. Okay.</p> <p>4 And what law firm had prepared that</p> <p>5 memorandum?</p> <p>6 A. Morrison & Foerster.</p> <p>7 Q. And that was a memorandum that they</p> <p>8 prepared prepetition with respect to the RMBS</p> <p>9 claims?</p> <p>10 A. I believe so.</p> <p>11 Q. Have you reviewed any fact summaries</p> <p>12 with respect to the claims asserted either in</p> <p>13 the FGIC complaint that you read or the FGIC</p> <p>14 proof of claim that you read?</p> <p>15 A. Fact summaries outside of the content</p> <p>16 of those two documents.</p> <p>17 Q. Yes.</p> <p>18 A. I don't think so.</p> <p>19 Q. Okay.</p> <p>20 And have you read any witness</p> <p>21 interviews or reviewed any witness interviews</p> <p>22 with respect to any of the facts that fall</p> <p>23 within those two documents, being the proof of</p> <p>24 claim that you reviewed and the complaint that</p> <p>25 you reviewed?</p>
<p style="text-align: right;">Page 112</p> <p>1 L. Kruger</p> <p>2 MR. KERR: Objection.</p> <p>3 A. Ask me the question one more time,</p> <p>4 please.</p> <p>5 Q. Sure.</p> <p>6 Have you reviewed any witness</p> <p>7 interviews or summaries of witness interviews</p> <p>8 that go to the facts that are alleged either in</p> <p>9 the FGIC proof of claim or the FGIC complaint</p> <p>10 that you read?</p> <p>11 A. At one point I read a Carpenter Lipps</p> <p>12 presentation, but I don't recall whether they</p> <p>13 were a witness or -- so that's my answer.</p> <p>14 Q. And what was the general subject of</p> <p>15 that presentation?</p> <p>16 A. The monoline claims.</p> <p>17 Q. At any time, have you spoken to any</p> <p>18 FGIC officer, director or employee with respect</p> <p>19 to the -- either the facts or the law related</p> <p>20 to the FGIC claims asserted either in the FGIC</p> <p>21 complaint that you read or the FGIC proof of</p> <p>22 claim?</p> <p>23 A. John Dubel.</p> <p>24 Q. And when did you speak with him?</p> <p>25 A. During the context of mediation over</p>	<p style="text-align: right;">Page 113</p> <p>1 L. Kruger</p> <p>2 the course of months.</p> <p>3 Q. And did you speak with him about</p> <p>4 underlying facts asserted in the, either the</p> <p>5 FGIC proof of claim or the FGIC complaint?</p> <p>6 MR. KERR: Objection. To the extent</p> <p>7 this was during the mediation, I'm going to</p> <p>8 direct him not to answer.</p> <p>9 BY MR. SHORE:</p> <p>10 Q. Are you going to follow that</p> <p>11 direction?</p> <p>12 A. Yes.</p> <p>13 Q. And did you have any discussion about</p> <p>14 the law underlying the FGIC proof of claim or</p> <p>15 the FGIC complaint that you read?</p> <p>16 MR. KERR: Same direction, with</p> <p>17 respect to which if you can ask about</p> <p>18 conversations he had with Mr. Dubel, if</p> <p>19 any, outside the context of the mediation,</p> <p>20 but within the mediation I'm going to</p> <p>21 direct him not to answer.</p> <p>22 BY MR. SHORE:</p> <p>23 Q. Are you going to follow that</p> <p>24 direction?</p> <p>25 A. Yes.</p>

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<p>1 L. Kruger</p> <p>2 Q. And if you had -- so, let me ask this</p> <p>3 then.</p> <p>4 Have you had any discussions with</p> <p>5 anybody who is an officer, director, employee</p> <p>6 of FGIC outside the context of the mediation?</p> <p>7 A. No.</p> <p>8 Q. How about their advisors? Have you</p> <p>9 spoken to any advisor for FGIC outside of the</p> <p>10 mediation regarding the FGIC claims?</p> <p>11 A. No.</p> <p>12 MR. SHORE: And I take it that the</p> <p>13 instruction is that to the extent that</p> <p>14 there were any discussions in connection</p> <p>15 with the -- within the mediation, no matter</p> <p>16 what the content was of those discussions,</p> <p>17 those are going to be the subject of the</p> <p>18 mediation privilege assertion?</p> <p>19 MR. KERR: Correct.</p> <p>20 BY MR. SHORE:</p> <p>21 Q. Other than your review of the FGIC</p> <p>22 proof of claim and the FGIC complaint, what</p> <p>23 other materials did you review in reaching your</p> <p>24 determination that the settlement agreement was</p> <p>25 a proper exercise of your business judgment?</p>	<p>1 L. Kruger</p> <p>2 A. I had read presentations by</p> <p>3 Morrison & Foerster on monoline claims.</p> <p>4 Q. Okay.</p> <p>5 How many?</p> <p>6 A. Some.</p> <p>7 Q. Anything else? Any other written</p> <p>8 materials you relied upon?</p> <p>9 A. I don't think so.</p> <p>10 Q. Let me ask this question.</p> <p>11 Did any of your discussions with</p> <p>12 Mr. Dubel inform your business decision to</p> <p>13 enter into the settlement agreement?</p> <p>14 A. No.</p> <p>15 Q. Okay.</p> <p>16 Let me understand and clarify another</p> <p>17 set of issues. Who was on the -- how would you</p> <p>18 describe the ResCap/FGIC team, that is, the</p> <p>19 people on your team, both lawyers, advisors,</p> <p>20 who were responsible for addressing issues</p> <p>21 related to the FGIC proofs of claim?</p> <p>22 A. Do you want specific attorneys at</p> <p>23 Morrison Foerster?</p> <p>24 Q. Yes. Yes.</p> <p>25 MR. KERR: This is with respect to</p>
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<p>1 L. Kruger</p> <p>2 the FGIC proof of claim, not the settlement</p> <p>3 agreement?</p> <p>4 MR. SHORE: The FGIC proof of claim</p> <p>5 which is settled in the settlement</p> <p>6 agreement. Just the FGIC issues.</p> <p>7 A. Gary Lee, I think. I think Lorenzo</p> <p>8 Marinuzzi. Maybe Jennifer Marines.</p> <p>9 Q. Okay.</p> <p>10 What business people --</p> <p>11 MR. KERR: Are you through?</p> <p>12 MR. SHORE: I'm not asking for an</p> <p>13 exhaustive list. I'm trying to get --</p> <p>14 A. I'm not sure who at the financial</p> <p>15 advisors. Probably Mark Ramsey.</p> <p>16 Q. Okay. Ramsey.</p> <p>17 What about Puntus?</p> <p>18 A. Marc Puntus.</p> <p>19 Q. Okay.</p> <p>20 And who at the -- who at, either an</p> <p>21 officer, director, employee of ResCap would be</p> <p>22 on that team? ResCap, I'm meaning all the</p> <p>23 debtor entities.</p> <p>24 A. When you say "on the team," what do</p> <p>25 you mean by that?</p>	<p>1 L. Kruger</p> <p>2 Q. People at any debtor who had a</p> <p>3 material role in the process of negotiation or</p> <p>4 in making a determination to enter into the</p> <p>5 FGIC settlement agreement.</p> <p>6 A. No one.</p> <p>7 Q. Other than yourself?</p> <p>8 A. Other than myself.</p> <p>9 Q. Okay.</p> <p>10 And what did you consider to be the</p> <p>11 MoFo lawyers's role in -- on the FGIC team?</p> <p>12 A. To render advice to me, to answer</p> <p>13 questions from me, to review the strengths and</p> <p>14 weaknesses of the FGIC claims, trustees claims.</p> <p>15 Q. And is there anything else that you</p> <p>16 considered their responsibility on that team?</p> <p>17 A. Well, to engage in the drafting of</p> <p>18 the settlement agreement, documentation of it.</p> <p>19 Q. Anything else?</p> <p>20 A. No, I think that's it.</p> <p>21 Q. Okay.</p> <p>22 And what was the role of the</p> <p>23 financial advisors on that team?</p> <p>24 A. To review for me the FGIC settlement</p> <p>25 in the context of the overall global</p>

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<p>1 L. Kruger</p> <p>2 settlement.</p> <p>3 Q. Did they -- was any part of their</p> <p>4 responsibility to run permutations on the</p> <p>5 amounts of FGIC claims under certain scenarios?</p> <p>6 MR. KERR: Objection. You say "FGIC</p> <p>7 claims." Just to understand --</p> <p>8 MR. SHORE: The claims asserted by</p> <p>9 FGIC.</p> <p>10 MR. KERR: Objection to form.</p> <p>11 A. In the context of the mediation,</p> <p>12 there were financial presentations which looked</p> <p>13 at various claims, FGIC and others.</p> <p>14 Q. Okay.</p> <p>15 Specifically in connection with your</p> <p>16 determination to execute the settlement</p> <p>17 agreement, did they provide you any specialized</p> <p>18 presentation on claims that were either</p> <p>19 asserted by FGIC or the RMBS trust with respect</p> <p>20 to FGIC wrapped trusts?</p> <p>21 A. No.</p> <p>22 MR. KERR: Objection to form.</p> <p>23 BY MR. SHORE:</p> <p>24 Q. All right.</p> <p>25 What did you consider your role to be</p>	<p>1 L. Kruger</p> <p>2 on that team?</p> <p>3 A. The business person making the</p> <p>4 decision to go forward or not.</p> <p>5 Q. And what did you understand to be</p> <p>6 your role in the negotiation of that business</p> <p>7 arrangement?</p> <p>8 A. Just as I said, to be the person on</p> <p>9 behalf of the debtors to determine whether or</p> <p>10 not to enter into the agreement.</p> <p>11 Q. Well, other than review materials</p> <p>12 that were given to you by either MoFo or the</p> <p>13 financial advisors, what role did you play in</p> <p>14 negotiating the FGIC settlement agreement?</p> <p>15 MR. KERR: Objection.</p> <p>16 A. I participated in the mediation</p> <p>17 sessions, which were attended by a cast of, you</p> <p>18 know, large numbers of people, sort of a</p> <p>19 swirling kaleidoscope of activity. I was a</p> <p>20 participant in those.</p> <p>21 I had discussions with people</p> <p>22 present, Cathy Patrick among them, and others,</p> <p>23 counsel for the trustees.</p> <p>24 Q. Well, let me focus on the time.</p> <p>25 There came a time when there was a</p>
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<p>1 L. Kruger</p> <p>2 plan support agreement that was executed;</p> <p>3 right?</p> <p>4 A. Yes.</p> <p>5 Q. And, but at that time the FGIC claim</p> <p>6 amounts had not been set?</p> <p>7 MR. KERR: Objection.</p> <p>8 Mischaracterizes his testimony.</p> <p>9 BY MR. SHORE:</p> <p>10 Q. Right?</p> <p>11 A. I'm not sure I'm following the</p> <p>12 question.</p> <p>13 Q. Okay.</p> <p>14 Were the FGIC -- well, let me ask</p> <p>15 this question.</p> <p>16 What's your understanding of why the</p> <p>17 FGIC settlement is being proposed now rather</p> <p>18 than as part of the plan?</p> <p>19 A. Because of the rehabilitation</p> <p>20 process, is my understanding.</p> <p>21 Q. Is it your testimony that at the time</p> <p>22 the PSA was signed, all aspects of the FGIC</p> <p>23 settlement agreement had been negotiated?</p> <p>24 MR. KERR: Objection. Asked and</p> <p>25 answered.</p>	<p>1 L. Kruger</p> <p>2 A. Essentially, yes.</p> <p>3 Q. Okay.</p> <p>4 And what was outside that? When you</p> <p>5 say "essentially yes."</p> <p>6 MR. KERR: Objection.</p> <p>7 A. At the time the PSA was executed,</p> <p>8 there was not a written settlement agreement.</p> <p>9 Q. So let me focus on that period of</p> <p>10 time.</p> <p>11 What role did you play in the post</p> <p>12 PSA signing with respect to the FGIC settlement</p> <p>13 agreement?</p> <p>14 A. Reading of the document that is now</p> <p>15 called the Settlement Agreement.</p> <p>16 Q. Okay.</p> <p>17 Anything else?</p> <p>18 A. Conversation with my counsel.</p> <p>19 Q. Did you have any conversations</p> <p>20 directly with FGIC or any FGIC attorney or</p> <p>21 representative?</p> <p>22 A. I don't recall.</p> <p>23 Q. And did you have any direct</p> <p>24 communications with any FGIC attorney or</p> <p>25 representative?</p>

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<p>1 L. Kruger</p> <p>2 A. I don't think so.</p> <p>3 Q. What was the role of Judge Peck in</p> <p>4 the -- in your determination to -- if any, in</p> <p>5 your determination to execute the FGIC</p> <p>6 Settlement Agreement?</p> <p>7 MR. KERR: Okay. Again, I'm just</p> <p>8 trying to be careful about the</p> <p>9 confidentiality of the mediation process.</p> <p>10 I don't want you to reveal what was</p> <p>11 discussed or whatever in the mediation</p> <p>12 role.</p> <p>13 If you can answer that question</p> <p>14 without doing so. If not --</p> <p>15 A. I mean, Judge Peck was sort of the</p> <p>16 person running the mediation process and the</p> <p>17 agreements that were reached were reached sort</p> <p>18 of under his process, if you will.</p> <p>19 So I don't know how else to answer</p> <p>20 that question.</p> <p>21 Q. Did Judge Peck provide the debtors</p> <p>22 with any advice as to what a reasonable FGIC</p> <p>23 claim amount would be?</p> <p>24 MR. KERR: Objection. I'm going to</p> <p>25 direct the witness not to answer the</p>	<p>1 L. Kruger</p> <p>2 confidentiality --</p> <p>3 BY MR. SHORE:</p> <p>4 Q. Are you going to follow that</p> <p>5 direction?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 Do any of the debtors contend that</p> <p>9 they relied upon the reviews of Judge Peck with</p> <p>10 respect to their determination to enter into</p> <p>11 the FGIC Settlement Agreement?</p> <p>12 MR. KERR: Objection.</p> <p>13 A. Only to the extent that Judge Peck</p> <p>14 was obviously part of the process that reached</p> <p>15 the global settlement agreement. So to that</p> <p>16 extent, sort of relied upon his participation.</p> <p>17 Q. What do you mean by that?</p> <p>18 A. Just that.</p> <p>19 Q. You can't provide any further</p> <p>20 testimony?</p> <p>21 A. Why don't you reask your question.</p> <p>22 I'll see if I can answer it.</p> <p>23 Q. Sure.</p> <p>24 Is it -- do any of the debtors</p> <p>25 contend in connection with the motion they</p>
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<p>1 L. Kruger</p> <p>2 filed for approving the FGIC settlement</p> <p>3 agreement, that Judge Peck played any</p> <p>4 substantive role in the determination with</p> <p>5 respect to the amount of any FGIC claims which</p> <p>6 were agreed to?</p> <p>7 MR. KERR: Objection. Again, I think</p> <p>8 you're invading the confidentiality</p> <p>9 mediation, and I'm going to direct the</p> <p>10 witness not to answer.</p> <p>11 MR. SHERWIN: I'm just asking him yes</p> <p>12 or no.</p> <p>13 MR. KERR: And I'm going to direct</p> <p>14 the witness not to answer that question.</p> <p>15 BY MR. SHORE:</p> <p>16 Q. So it's possible that Judge -- that</p> <p>17 your determination with respect to FGIC claim</p> <p>18 amounts was based upon a recommendation of any</p> <p>19 sort from Judge Peck --</p> <p>20 MR. KERR: Again --</p> <p>21 Q. -- as to an appropriate amount of the</p> <p>22 claim?</p> <p>23 MR. KERR: -- I direct the witness</p> <p>24 not to answer. And, again, just so I'm</p> <p>25 clear, based on the confidentiality order</p>	<p>1 L. Kruger</p> <p>2 in place respecting the issue.</p> <p>3 BY MR. SHORE:</p> <p>4 Q. And you're going to follow that</p> <p>5 instruction?</p> <p>6 A. Yes.</p> <p>7 Q. So what did you rely upon in</p> <p>8 determining to execute the FGIC Settlement</p> <p>9 Agreement?</p> <p>10 A. That the FGIC Settlement Agreement</p> <p>11 was part of the general overall global</p> <p>12 settlement that, as I've said before in</p> <p>13 testimony here today, seemed to me to be an</p> <p>14 outstanding good result for the various</p> <p>15 participants in the process and for all</p> <p>16 creditors of the various estates.</p> <p>17 And it seemed to be that the</p> <p>18 alternative of endless litigation among the</p> <p>19 creditors, the debtor, no Ally contribution and</p> <p>20 the like, was a much worse alternative for all</p> <p>21 participants in this process.</p> <p>22 Q. Let me restate my question.</p> <p>23 Just what did you rely upon? I take</p> <p>24 it one thing you relied upon was the -- were</p> <p>25 the presentations that MoFo was giving?</p>

<p style="text-align: right;">Page 126</p> <p>1 L. Kruger</p> <p>2 MR. KERR: Objection.</p> <p>3 A. I relied on a lot of things. That</p> <p>4 was among them.</p> <p>5 Q. Okay.</p> <p>6 That was one. First of all, let's be</p> <p>7 clear what the -- Morrison & Foerster presented</p> <p>8 you with presentations and you relied upon them</p> <p>9 in determining to execute the --</p> <p>10 A. No. They -- I sought their -- they</p> <p>11 told me their views of various issues,</p> <p>12 strengths and weaknesses of various of the</p> <p>13 parties's claims. Then I made my own decision</p> <p>14 as to whether or not to proceed.</p> <p>15 Q. Good. So let's clear that up.</p> <p>16 You are not stating that -- that</p> <p>17 reliance upon counsel is a basis for approving</p> <p>18 the FGIC motion?</p> <p>19 MR. KERR: Let me respond to that,</p> <p>20 because that's really a legal question.</p> <p>21 We're not asserting a reliance on</p> <p>22 counsel, defense or however you want to</p> <p>23 characterize it here. Mr. Kruger made his</p> <p>24 independent judgment. He has testified --</p> <p>25 he has testified about the basis of his</p>	<p style="text-align: right;">Page 127</p> <p>1 L. Kruger</p> <p>2 independent judgment.</p> <p>3 MR. SHORE: Okay.</p> <p>4 MR. KERR: Clearly he had discussions</p> <p>5 with counsel, he had discussions in the</p> <p>6 mediation. They're confidential that all,</p> <p>7 as he described part and parcel, into what</p> <p>8 the thought processes were.</p> <p>9 BY MR. SHORE:</p> <p>10 Q. Okay.</p> <p>11 So what of the things you relied upon</p> <p>12 in making your determination with respect to</p> <p>13 the advisability of entering into the FGIC</p> <p>14 Settlement Agreement do you feel can be</p> <p>15 appropriately disclosed without waiving an</p> <p>16 attorney-client privilege or waiving a</p> <p>17 mediation privilege?</p> <p>18 MR. KERR: Objection. Asked and</p> <p>19 answered.</p> <p>20 A. I don't think there's anything.</p> <p>21 MR. KERR: Other than what he has</p> <p>22 already testified to.</p> <p>23 MR. SHORE: You're not testifying.</p> <p>24 MR. KERR: Okay. But you --</p> <p>25 MR. SHORE: No. Make an appropriate</p>
<p style="text-align: right;">Page 128</p> <p>1 L. Kruger</p> <p>2 objection to the form. You can't do that</p> <p>3 and you know you can't do that. And if I</p> <p>4 show Judge Glenn that little statement you</p> <p>5 made at the end of the witness's testimony</p> <p>6 when he was completed, there was a period</p> <p>7 at the end of that, he wouldn't be pleased.</p> <p>8 MR. KERR: Okay. And I would ask,</p> <p>9 Mr. Shore, that you ask clear questions so</p> <p>10 the witness can answer them clearly and</p> <p>11 make sure that he understands what you're</p> <p>12 asking him so he can answer it. Okay.</p> <p>13 MR. SHORE: Well, I would have</p> <p>14 expected that if you thought my question</p> <p>15 was unclear, you would have interposed a</p> <p>16 form objection, not made a speaking</p> <p>17 statement on the record which attempted to</p> <p>18 modify your witness's statement.</p> <p>19 So please feel free, it doesn't hurt</p> <p>20 my feelings, you can object to any question</p> <p>21 you think is unclear by saying "Objection</p> <p>22 to form." Okay.</p> <p>23 BY MR. SHORE:</p> <p>24 Q. So what role do you believe the</p> <p>25 ResCap, LLC board had in approving the FGIC</p>	<p style="text-align: right;">Page 129</p> <p>1 L. Kruger</p> <p>2 Settlement Agreement?</p> <p>3 A. I think, as I've said before, they</p> <p>4 were aware of its terms and they authorized me</p> <p>5 to proceed.</p> <p>6 Q. Okay.</p> <p>7 But you believe you already had the</p> <p>8 authorization to do so?</p> <p>9 A. I believe so.</p> <p>10 Q. And did the board express to you any</p> <p>11 views on their part with respect to the merits</p> <p>12 or propriety of entering into the FGIC</p> <p>13 Settlement Agreement? Yes or no, let's start</p> <p>14 there.</p> <p>15 MR. KERR: Well, objection. I just</p> <p>16 want to, again, to the extent you can</p> <p>17 answer "yes" or "no" without disclosing</p> <p>18 privileged communications, I think you can</p> <p>19 answer that question "yes" or "no."</p> <p>20 A. No.</p> <p>21 Q. So there wasn't a single board member</p> <p>22 who had a communication with you, either oral</p> <p>23 or written, where they expressed any view with</p> <p>24 respect to whether or not you should be</p> <p>25 entering into the FGIC Settlement Agreement?</p>

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<p>1 L. Kruger</p> <p>2 A. Oh, I'm sorry, I misunderstood your</p> <p>3 question. Why don't you restate your question,</p> <p>4 Chris.</p> <p>5 Q. Sure.</p> <p>6 Did you have any communications with</p> <p>7 any board member of ResCap, LLC, where they</p> <p>8 expressed their views as to the propriety of</p> <p>9 you executing the FGIC Settlement Agreement?</p> <p>10 A. I think the board --</p> <p>11 MR. KERR: Again, you can answer that</p> <p>12 "yes" or "no" without revealing</p> <p>13 communications, if you can.</p> <p>14 A. Yes.</p> <p>15 Q. And what did they say?</p> <p>16 MR. KERR: Objection. To the extent</p> <p>17 you had conversations with the board</p> <p>18 outside the presence of counsel, you can</p> <p>19 answer the question; but to the extent you</p> <p>20 had conversations with the board in the</p> <p>21 presence of counsel, I will object to --</p> <p>22 BY MR. SHORE:</p> <p>23 Q. Well, first let's find out, outside</p> <p>24 the presence of counsel.</p> <p>25 A. None.</p>	<p>1 L. Kruger</p> <p>2 Q. Okay.</p> <p>3 Within the presence of counsel?</p> <p>4 MR. KERR: Again, if your question is</p> <p>5 what was communicated with the board in the</p> <p>6 presence of counsel, I think that is within</p> <p>7 the privilege, and I will direct the</p> <p>8 witness not to answer that question.</p> <p>9 MR. SHORE: Within which privilege?</p> <p>10 MR. KERR: Attorney-client privilege.</p> <p>11 MR. SHORE: Attorney-client</p> <p>12 privilege. All right. So let's break that</p> <p>13 down.</p> <p>14 BY MR. SHORE:</p> <p>15 Q. First of all, can you isolate how</p> <p>16 many such communications there were?</p> <p>17 A. Some.</p> <p>18 Q. Was it at one meeting, two meetings,</p> <p>19 outside meetings, what can you tell me that</p> <p>20 won't evade the privilege first, to the extent</p> <p>21 one exists?</p> <p>22 A. I don't remember the number of</p> <p>23 discussions we had with the board or I had with</p> <p>24 the board. A few.</p> <p>25 Q. Okay.</p>
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<p>1 L. Kruger</p> <p>2 Do you any recollection of what a --</p> <p>3 the substance of what the -- any particular</p> <p>4 board member said?</p> <p>5 MR. KERR: Again, you can answer that</p> <p>6 question "yes" or "no" without revealing</p> <p>7 the substance, if you recall.</p> <p>8 A. No.</p> <p>9 Q. And can you remember the identity of</p> <p>10 any board member who expressed a view?</p> <p>11 A. No.</p> <p>12 Q. Okay.</p> <p>13 So you think that there were some</p> <p>14 communications coming from the board members to</p> <p>15 you with respect to the FGIC Settlement</p> <p>16 Agreement, but you can't remember who said it,</p> <p>17 what they said, or when they said it?</p> <p>18 A. Well, they said it during board</p> <p>19 meetings.</p> <p>20 Q. Okay.</p> <p>21 So -- but you don't know which board</p> <p>22 meeting?</p> <p>23 A. Correct.</p> <p>24 Q. And you don't know who said it?</p> <p>25 A. Correct.</p>	<p>1 L. Kruger</p> <p>2 Q. And you don't recall what they said?</p> <p>3 A. Correct.</p> <p>4 Q. Did you assist -- at the board</p> <p>5 meetings that we're talking about now, did you</p> <p>6 assist in the presentation of any materials</p> <p>7 that were presented to the ResCap, LLC board?</p> <p>8 MR. KERR: Objection.</p> <p>9 A. About what?</p> <p>10 Q. About -- sorry. About the FGIC</p> <p>11 Settlement Agreement.</p> <p>12 A. No.</p> <p>13 Q. Did you assist in the preparation of</p> <p>14 any materials that were presented to the</p> <p>15 ResCap, LLC board on monoline claims?</p> <p>16 A. No.</p> <p>17 Q. How many ResCap, LLC board meetings</p> <p>18 did you attend, either in person or on the</p> <p>19 phone, with respect to the FGIC issues, which</p> <p>20 would either be the negotiation of the</p> <p>21 agreement with FGIC or the entry into the FGIC</p> <p>22 Settlement Agreement?</p> <p>23 A. As I said before, some.</p> <p>24 Q. And I think you said before, but</p> <p>25 there are no minutes kept of who attends what</p>

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<p>1 L. Kruger 2 board meetings? 3 A. I don't know. 4 Q. Okay. 5 You've never been asked to review 6 board minutes of meetings you've been at? 7 A. Correct. 8 Q. What did you view your role to be at 9 the ResCap, LLC board meetings you've testified 10 to, that is, to discuss any kind of FGIC 11 related or a monoline-related issue? 12 A. That's what I thought my role was, to 13 discuss with the board the FGIC settlement. My 14 view of it. 15 Q. And did you express your views in 16 writing at those board meetings? 17 A. No. 18 Q. Was there a secretary present keeping 19 notes? 20 A. I don't know. 21 Q. Were you aware of whether there were 22 any corporate resolutions at GMACM with respect 23 to the FGIC Settlement Agreement? 24 A. I don't know. 25 Q. What about at RFC?</p>	<p>1 L. Kruger 2 A. I don't know. 3 Q. Do you know whether there were any 4 shareholder or member consents that were given 5 for those entities in connection with the FGIC 6 Settlement Agreement? 7 A. Not that I know of. 8 Q. So let's just focus on the proofs of 9 claim. 10 You understand that as part of the 11 FGIC Settlement Agreement, FGIC is compromising 12 the proofs of claim it filed at GMACM, RFC and 13 ResCap, LLC; right? 14 A. Yes. 15 Q. And it's also compromising the trust 16 claims filed at those three estates; right? 17 MR. KERR: Objection. 18 A. I assume the trusts are compromising 19 their claims. 20 Q. Right. 21 Well, the settlement agreement is 22 compromising those claims; right? Because the 23 trusts are providing releases. 24 A. Correct. 25 Q. And are you aware of who on the FGIC</p>
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<p>1 L. Kruger 2 team that we defined earlier reviewed the trust 3 claims that are being comprised as part of the 4 settlement? 5 A. No. 6 Q. And are you aware of who on the FGIC 7 team reviewed the other proofs of claim that 8 had been filed by FGIC that you hadn't 9 reviewed? 10 A. I don't know. 11 Q. Is it your assumption that somebody 12 reviewed those? 13 A. I assume, but I don't know. 14 Q. And, as you sit here today, on behalf 15 of any of the three debtors you're appearing 16 for, did any of those debtors have a reason to 17 believe that those proofs of claim could be 18 amended to add additional claims at this time? 19 MR. KERR: Objection. 20 A. I don't know. 21 Q. Each of those estates has a bar date 22 in it; right? 23 A. Yes. 24 Q. Okay. 25 Let me ask you to explain, and maybe</p>	<p>1 L. Kruger 2 you can turn to your declaration, which is 3 marked as Kruger No. 2 -- 4 (A Discussion was Held off the 5 Record.) 6 MR. SHORE: Kruger No. 2, which is 7 the declaration. 8 MR. KERR: You want the PSA 9 declaration or the FGIC declaration? 10 MR. SHORE: The FGIC declaration. 11 Sorry. It's right here. 12 BY MR. SHORE: 13 Q. Can you turn to page 10, Footnote 7. 14 I ask you to review that. 15 A. (Document Review.) 16 Okay. 17 Q. All right. 18 Who wrote that footnote? 19 A. My counsel. 20 Q. And you believe everything in there 21 to be true? 22 A. I believe so. 23 Q. All right. 24 Can you explain how the FGIC trustees 25 proofs of claim and the FGIC proofs of claim</p>

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<p>1 L. Kruger 2 overlap, if they do? 3 MR. KERR: Objection. 4 A. Explain how they overlap? 5 Q. Yes. 6 MR. KERR: Objection, to the extent 7 you're asking for a legal conclusion. Two, 8 I object to the extent you are -- you would 9 be revealing privileged communications with 10 respect to answering that question. 11 So if you can answer that question 12 without revealing privileged 13 communications, you can do so. 14 A. Do you want to repeat the question. 15 Q. Sure. 16 How, in your view, nonlegal view, if 17 you have one, do the FGIC proofs of claim and 18 the FGIC trust proofs of claim overlap? Let me 19 ask it more colloquially for you. 20 Do you believe that those proofs of 21 claim set forth claims for separate debts or 22 obligations, or that in some respects they 23 assert claims for the same debts and 24 obligations? 25 A. I don't know.</p>	<p>1 L. Kruger 2 MR. KERR: Again, and I -- I just 3 counsel the witness -- I'm going to state 4 my objection. 5 Counsel the witness that in answering 6 that question you don't reveal any 7 privileged communications. 8 A. I don't know. 9 Q. Okay. 10 So I take it that any understanding 11 of how those claims might overlap or not 12 overlap didn't form a basis for you to 13 determine to execute the FGIC settlement 14 agreement? 15 A. Is your question who owns those 16 claims? 17 Q. My question -- well, first of all, 18 can you answer the question I just gave you, 19 which is, in your execution of the FGIC 20 Settlement Agreement, did you have any view in 21 your mind as to whether or not FGIC and the 22 trustees were separate -- were asserting the 23 same claims or different claims? 24 MR. KERR: Again, I'm going to 25 object. You can answer that question to</p>
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<p>1 L. Kruger 2 the extent you don't reveal any 3 communications with counsel, but you can 4 answer the question. 5 A. I believe they had separate claims. 6 Q. Okay. 7 And what's the basis for your belief? 8 MR. KERR: Same objection. 9 A. FGIC had its claims and the trustees 10 had their claims. 11 Q. Okay. 12 Did you understand that those claims 13 were for separate obligations? 14 A. I believe so. 15 Q. And what is the basis of that belief? 16 MR. KERR: Same objection. 17 A. Conversation with my counsel and my 18 own business decision. 19 Q. Okay. 20 But your own business decision wasn't 21 based upon any review of the RMBS trusts proofs 22 of claim; right, because you didn't do that? 23 MR. KERR: Objection. 24 A. I had not reviewed those. 25 Q. Okay.</p>	<p>1 L. Kruger 2 So let me ask you a question now, and 3 you may want to pull out No. 1, which is the 4 settlement agreement. 5 A. Okay. 6 Q. All right. 7 I'm going to ask you to turn to 8 page 4, Section 2.01, the releases. 9 A. Uh-huh. 10 Q. Now, you don't need to review that. 11 Let me give you a lead-in question on this. 12 Am I right that the FGIC settlement 13 agreement contemplates two scenarios, one in 14 which the plan is confirmed and one in which 15 the plan is not confirmed; right? 16 A. Correct. 17 Q. I want to focus on the situation in 18 which the plan is not confirmed. All right. 19 And I want to focus on the trustee 20 claims. What happens to the trustee claims as 21 your business understanding in the deal you 22 reached, what happens to the trustee claims if 23 the plan is not confirmed? 24 A. I believe they are released. 25 Q. Okay.</p>

<p style="text-align: right;">Page 142</p> <p>1 L. Kruger</p> <p>2 So notwithstanding their assertion of</p> <p>3 a five -- or I think you said in here more than</p> <p>4 five billion dollars of claims, they give up</p> <p>5 those claims in the debtor's view if the plan</p> <p>6 is not confirmed?</p> <p>7 MR. KERR: Objection.</p> <p>8 A. And the settlement agreement is</p> <p>9 confirmed by the court.</p> <p>10 Q. Right.</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 And then, I take it that the -- that</p> <p>14 if this settlement agreement is approved,</p> <p>15 you're right to put that qualification in, but</p> <p>16 the plan does not close, the trustees are free</p> <p>17 to go -- to pursue their claims against Ally,</p> <p>18 whatever claims they might have; right?</p> <p>19 A. I assume so. I assume the global</p> <p>20 settlement goes away.</p> <p>21 Q. And in the same scenario, FGIC is</p> <p>22 permitted to pursue its claims against Ally?</p> <p>23 MR. KERR: Objection.</p> <p>24 A. Yes.</p> <p>25 Q. What analysis, if any, have you seen</p>	<p style="text-align: right;">Page 143</p> <p>1 L. Kruger</p> <p>2 as to whether or not Ally has a right of</p> <p>3 indemnity or contribution if it is liable to</p> <p>4 any RMBS trust or FGIC with respect to its</p> <p>5 claims?</p> <p>6 Have you seen one? Let's start yes</p> <p>7 or no.</p> <p>8 A. Yes.</p> <p>9 Q. And in forming -- in forming your</p> <p>10 determination to execute the FGIC Settlement</p> <p>11 Agreement, did you consider the possibility</p> <p>12 that if this settlement agreement is approved</p> <p>13 and the plan is not confirmed, that FGIC can</p> <p>14 sue Ally, and if it recovers, Ally might be</p> <p>15 able to make a claim back against any debtor</p> <p>16 estate?</p> <p>17 MR. KERR: Objection.</p> <p>18 A. I discussed that with my counsel.</p> <p>19 Q. Okay.</p> <p>20 And did you reach a conclusion, yes</p> <p>21 or no?</p> <p>22 MR. KERR: Objection.</p> <p>23 BY MR. SHORE:</p> <p>24 Q. And to whether there was any risk of</p> <p>25 that?</p>
<p style="text-align: right;">Page 144</p> <p>1 L. Kruger</p> <p>2 A. No.</p> <p>3 MR. KERR: Again, you can answer that</p> <p>4 "yes" or "no."</p> <p>5 BY MR. SHORE:</p> <p>6 Q. And did you perform a business view</p> <p>7 as to the level of the risk of that happening?</p> <p>8 A. No.</p> <p>9 Q. But you agree with me that</p> <p>10 technically the way the settlement agreement</p> <p>11 works, FGIC would be able to assert claims</p> <p>12 against Ally and Ally might be able to assert</p> <p>13 claims back against the debtors?</p> <p>14 MR. KERR: Objection. Objection.</p> <p>15 A. I have to stop and read the agreement</p> <p>16 to be sure. You are correct.</p> <p>17 Q. In reviewing -- do you understand</p> <p>18 that one of the theories that FGIC had asserted</p> <p>19 in its proofs of claim was that RFC was</p> <p>20 derivatively liable for the debts of GMACM and</p> <p>21 GMACM was derivatively liable for the debts of</p> <p>22 RFC?</p> <p>23 A. I don't know if I saw that. I saw</p> <p>24 that in the alter ego argument.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 145</p> <p>1 L. Kruger</p> <p>2 Well, so, let me talk about</p> <p>3 derivative liability and I'll give you a</p> <p>4 definition of derivative liability.</p> <p>5 Where a particular debtor entity</p> <p>6 would be held responsible for the debts of</p> <p>7 another legal entity without ever having</p> <p>8 transacted with the third party.</p> <p>9 Okay?</p> <p>10 A. Uh-huh.</p> <p>11 Q. All right.</p> <p>12 (A Discussion was Held off the</p> <p>13 Record.)</p> <p>14 (Kruger's Exhibit 12, Proof of</p> <p>15 Claim by FGIC, was marked for</p> <p>16 identification.)</p> <p>17 BY MR. SHORE:</p> <p>18 Q. All right.</p> <p>19 Kruger No. 12, for the record, is a</p> <p>20 proof of claim filed by FGIC against</p> <p>21 Residential Funding Company, LLC. I know that</p> <p>22 people out here might be holding ones with</p> <p>23 different names on them.</p> <p>24 A. Okay.</p> <p>25 Q. But I will represent that is the same</p>

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<p>1 L. Kruger</p> <p>2 substance that was attached to each of them.</p> <p>3 I'm just doing it for convenience of counsel so</p> <p>4 that more people can have a copy of it.</p> <p>5 And if you look at the attachment on</p> <p>6 the third page of Kruger No. 12, is this the</p> <p>7 attachment you reviewed before when you said</p> <p>8 you reviewed a FGIC proof of claim?</p> <p>9 MR. KERR: Objection.</p> <p>10 A. As I said, I reviewed one FGIC proof</p> <p>11 of claim, but I assume -- you said that they're</p> <p>12 the same. I take your word for it.</p> <p>13 Q. Okay.</p> <p>14 Well, as I said, do you recall</p> <p>15 reviewing this document entitled "Attachment to</p> <p>16 Proofs of Claim of FGIC against" -- you see</p> <p>17 it's ResCap, LLC, GMAC Mortgage and RFC?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 If you turn to -- turn to</p> <p>21 paragraph 39. So, actually, let me focus you</p> <p>22 on 38. All right.</p> <p>23 You see in 38, FGIC claims it's</p> <p>24 entitled to receive damages from each of the</p> <p>25 debtors in an amount not less than 1.85</p>	<p>1 L. Kruger</p> <p>2 billion?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Okay.</p> <p>5 And in little 3 there, "Expectation</p> <p>6 damages from -- for any losses on the trusts."</p> <p>7 A. Yes.</p> <p>8 Q. Do you understand that the RMBS</p> <p>9 trusts also asserted claims against these three</p> <p>10 debtors at issue for expectation damages for</p> <p>11 losses on the trust?</p> <p>12 MR. KERR: Objection.</p> <p>13 A. I don't know.</p> <p>14 Q. Then if you look on paragraph 39, I'm</p> <p>15 going to come back that the first sentence that</p> <p>16 says that ResCap is liable, but it says,</p> <p>17 "Additionally, as described previously, GMACM</p> <p>18 and RFC are likewise jointly and severally</p> <p>19 liable for FGIC's damages."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Okay.</p> <p>23 What role, if any, did -- well, first</p> <p>24 of all, did you consider the possibility that</p> <p>25 GMACM and RFC might be jointly and severally</p>
Page 148	Page 149
<p>1 L. Kruger</p> <p>2 liable in making your determination as to</p> <p>3 whether or not to settle in the FGIC Settlement</p> <p>4 Agreement?</p> <p>5 A. Yes.</p> <p>6 Q. Okay.</p> <p>7 And what role did that have?</p> <p>8 A. I discussed it with my counsel.</p> <p>9 Q. And did you form a business view as</p> <p>10 to the level of risk that that would happen?</p> <p>11 A. No.</p> <p>12 Q. But I take it as part of the</p> <p>13 settlement agreement, there is no -- that there</p> <p>14 is no joint and several liability, there are</p> <p>15 fixed amounts set at each estate?</p> <p>16 MR. KERR: Objection.</p> <p>17 A. Under which scenario, plan, no plan?</p> <p>18 Q. Well, okay.</p> <p>19 The -- only one claim can be asserted</p> <p>20 against GMACM by FGIC; right?</p> <p>21 MR. KERR: Objection.</p> <p>22 A. Under --</p> <p>23 Q. Under the settlement agreement.</p> <p>24 A. Right.</p> <p>25 Q. Even if the plan isn't consummated,</p>	<p>1 L. Kruger</p> <p>2 there is only ever going to be one claim</p> <p>3 against GMACM?</p> <p>4 A. Correct.</p> <p>5 Q. And whether or not the plan is ever</p> <p>6 consummated, there's only going to be one FGIC</p> <p>7 claim against RFC?</p> <p>8 A. Correct.</p> <p>9 Q. Now, with respect to the claims that</p> <p>10 are listed in paragraph 38, did you understand</p> <p>11 that there was a possibility that if litigated</p> <p>12 to conclusion, those claims could result in a</p> <p>13 zero recovery by FGIC?</p> <p>14 A. I discussed the status --</p> <p>15 MR. KERR: Wait. Again, you can</p> <p>16 answer that question without revealing</p> <p>17 communications with clients, with your</p> <p>18 attorneys, but why don't you listen to the</p> <p>19 question again.</p> <p>20 A. Give it again.</p> <p>21 Q. Sure.</p> <p>22 With respect to the claims that are</p> <p>23 outlined in paragraph 38 of Kruger No. 12, did</p> <p>24 you reach an understanding that there was a</p> <p>25 possibility that, if litigated to conclusion,</p>

<p style="text-align: right;">Page 150</p> <p>1 L. Kruger</p> <p>2 FGIC would be -- would have no claims at any of</p> <p>3 the three debtors?</p> <p>4 A. No.</p> <p>5 Q. You had always believed that, if</p> <p>6 litigated, FGIC would be entitled to some</p> <p>7 claim?</p> <p>8 A. I've had all these discussions with</p> <p>9 counsel. I'm uncomfortable describing those</p> <p>10 conversations or the conclusions of them.</p> <p>11 Q. When you say you're uncomfortable,</p> <p>12 are you going to get an instruction from</p> <p>13 counsel? Are you going to follow counsel's</p> <p>14 instructions?</p> <p>15 MR. KERR: Let me help the witness</p> <p>16 out.</p> <p>17 Mr. Kruger, you -- I think the</p> <p>18 question is did you reach an understanding.</p> <p>19 And if you can testify to any understanding</p> <p>20 you reached as a business person, that's</p> <p>21 fine. I just don't want you to reveal any</p> <p>22 communications that you had with counsel in</p> <p>23 connection with responding to that</p> <p>24 question.</p> <p>25 And if you don't know, you don't</p>	<p style="text-align: right;">Page 151</p> <p>1 L. Kruger</p> <p>2 know, but --</p> <p>3 A. I don't know.</p> <p>4 Q. And did you understand that there was</p> <p>5 a possibility that even if the FGIC claims were</p> <p>6 litigated to conclusion and resulted in a</p> <p>7 recovery or a claim amount awarded to FGIC,</p> <p>8 that, nonetheless, it might not be able to</p> <p>9 receive any distribution if its claim was</p> <p>10 subordinated?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 And while you were negotiating the</p> <p>14 FGIC Settlement Agreement, did you have an</p> <p>15 understanding as to what the likelihood of</p> <p>16 distribution was at GMACM on account of a</p> <p>17 subordinated unsecured claim?</p> <p>18 MR. KERR: Again, you can answer that</p> <p>19 question to the extent you don't reveal any</p> <p>20 privileged communications.</p> <p>21 BY MR. SHORE:</p> <p>22 Q. I'm just talking about the math here.</p> <p>23 A. Repeat that question.</p> <p>24 Q. Sure.</p> <p>25 Let me ask it in a different way.</p>
<p style="text-align: right;">Page 152</p> <p>1 L. Kruger</p> <p>2 Have you seen any financial analysis</p> <p>3 since you have been CRO of these three</p> <p>4 particular debtors in which GMACM has</p> <p>5 distributable value available for a class of</p> <p>6 claims that are subordinate to general</p> <p>7 unsecured claims?</p> <p>8 A. No.</p> <p>9 Q. And what about with respect to RFC?</p> <p>10 A. No.</p> <p>11 Q. So was it your working assumption</p> <p>12 when negotiating the FGIC settlement agreement</p> <p>13 that if FGIC's claims were subordinated, that</p> <p>14 they would not receive any recovery at</p> <p>15 either -- at any of the three estates?</p> <p>16 MR. KERR: Objection. Assumes facts</p> <p>17 not in evidence.</p> <p>18 A. I did not consider that.</p> <p>19 Q. Well, did you consider at any time</p> <p>20 during the negotiation of the FGIC Settlement</p> <p>21 Agreement that whether, by way of litigation or</p> <p>22 by subordination, that FGIC would get a zero</p> <p>23 recovery in the GMACM estate?</p> <p>24 A. I did consider whether or not their</p> <p>25 claims could be subordinated, and I discussed</p>	<p style="text-align: right;">Page 153</p> <p>1 L. Kruger</p> <p>2 that with my counsel.</p> <p>3 Q. Uh-huh.</p> <p>4 But you didn't consider the effect of</p> <p>5 what subordination would mean?</p> <p>6 MR. KERR: Objection.</p> <p>7 A. I did consider the effect of what</p> <p>8 subordination would mean.</p> <p>9 Q. And what was your conclusion?</p> <p>10 A. That the risk of -- that the</p> <p>11 alternative of the settlement agreement was far</p> <p>12 superior to them engaging in litigation.</p> <p>13 Q. Now, I'm just trying to focus on the</p> <p>14 consequence of what subordination meant and I'm</p> <p>15 just trying to harmonize the answers you gave.</p> <p>16 You haven't seen anything that shows</p> <p>17 that a subordinated claim would get a</p> <p>18 distribution. Did you understand that in the</p> <p>19 context of the allowance of the FGIC claims or</p> <p>20 the litigation of the FGIC claims, that FGIC</p> <p>21 might, in fact, get zero?</p> <p>22 A. Yes.</p> <p>23 Q. Okay.</p> <p>24 Have you seen any -- well, let me ask</p> <p>25 it this way. What was the working, your</p>

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<p>1 L. Kruger</p> <p>2 working assumption in negotiating the FGIC</p> <p>3 Settlement Agreement as to the possibility</p> <p>4 that -- I'm going to deal with a different</p> <p>5 theory of derivative liability -- that at any</p> <p>6 creditor would pierce the corporate veil</p> <p>7 between GMACM and ResCap, LLC?</p> <p>8 A. It's another subject that I discussed</p> <p>9 with my counsel.</p> <p>10 Q. But you formed no view as to the risk</p> <p>11 that would happen?</p> <p>12 A. I understood the risk and I thought</p> <p>13 that the litigation to get to the conclusion</p> <p>14 was not worth the risk.</p> <p>15 Q. Okay.</p> <p>16 And what about with respect to</p> <p>17 piercing the corporate veil between RFC and</p> <p>18 ResCap, LLC?</p> <p>19 A. Same answer.</p> <p>20 Q. And did you, in analyzing the --</p> <p>21 whether or not to enter into the FGIC</p> <p>22 Settlement Agreement, the possibility that</p> <p>23 GMACM and ResCap, LLC, could be substantively</p> <p>24 consolidated in the bankruptcy cases?</p> <p>25 A. If there was no settlement agreement.</p>	<p>1 L. Kruger</p> <p>2 Q. Yes.</p> <p>3 A. Sure.</p> <p>4 Q. Okay.</p> <p>5 And did you form a view as to the</p> <p>6 risk of that?</p> <p>7 A. Yes.</p> <p>8 Q. And did that inform your decision to</p> <p>9 enter into the FGIC Settlement Agreement?</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 And what about with respect to the</p> <p>13 RFC side?</p> <p>14 A. Yes.</p> <p>15 Q. Same answers?</p> <p>16 A. Same answer.</p> <p>17 MR. KERR: Chris, at some point, I</p> <p>18 don't know whether you're going to take a</p> <p>19 break for lunch or --</p> <p>20 MR. SHORE: Sure. I'm happy to take</p> <p>21 a break. Let's take a break.</p> <p>22 (Recess taken from 12:59 p.m. to</p> <p>23 1:30 p.m.)</p> <p>24</p> <p>25</p>
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<p>1 L. Kruger</p> <p>2 AFTERNOON SESSION</p> <p>3 (Time noted: 1:30 p.m.)</p> <p>4</p> <p>5 LEWIS KRUGER,</p> <p>6 resumed and testified as follows:</p> <p>7 CONTINUED EXAMINATION</p> <p>8 BY MR. SHORE:</p> <p>9 Q. Let's focus on the claims that are</p> <p>10 being allowed at RFC -- sorry, ResCap, LLC.</p> <p>11 What's the reason why the claim is</p> <p>12 fixed if the plan is confirmed but left</p> <p>13 unliquidated if the plan is not confirmed?</p> <p>14 MR. KERR: Again, Chris, as you know,</p> <p>15 there's a question about whether or not</p> <p>16 plan confirmation issues need to be</p> <p>17 addressed as part of the plan confirmation</p> <p>18 process.</p> <p>19 I recognize that there's stuff in the</p> <p>20 FGIC Settlement Agreement, so -- and I --</p> <p>21 this is not a place to be talking about</p> <p>22 broader plan confirmation issues. So I</p> <p>23 will object if I think we're getting there.</p> <p>24 A. Want to start the question again.</p> <p>25 Q. Sure.</p>	<p>1 L. Kruger</p> <p>2 What's the reason why the FGIC claim</p> <p>3 at ResCap, LLC is fixed if the plan is</p> <p>4 confirmed but left unliquidated if the plan is</p> <p>5 not?</p> <p>6 MR. KERR: And, again, are you</p> <p>7 talking -- you're referring to the FGIC</p> <p>8 Settlement Agreement, because if you're</p> <p>9 talking more than that, then I don't think</p> <p>10 it's appropriate.</p> <p>11 BY MR. SHORE:</p> <p>12 Q. Can you answer the question?</p> <p>13 A. Are you asking -- if I can respond by</p> <p>14 this way. Are you talking about the</p> <p>15 \$337 billion allocation?</p> <p>16 Q. Yes.</p> <p>17 A. I think it is in the context of the</p> <p>18 plan. But having said that, I think the reason</p> <p>19 that there is a claim there is that FGIC did</p> <p>20 have, indeed, claims against ResCap, as well as</p> <p>21 against Ally, and it seemed to be appropriate</p> <p>22 that it should be there and it's part of the</p> <p>23 global summary and part of the allocation</p> <p>24 process that we went through as part of the</p> <p>25 mediation.</p>

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<p>1 L. Kruger</p> <p>2 Q. All right. So let me break that into</p> <p>3 two pieces.</p> <p>4 First of all, why was it left</p> <p>5 unliquidated in the event that the plan was not</p> <p>6 confirmed?</p> <p>7 MR. WYNNE: I'm going to object to</p> <p>8 the extent that that would require him to</p> <p>9 disclose what was discussed in the</p> <p>10 mediation.</p> <p>11 MR. KERR: Let me state it this way.</p> <p>12 All right.</p> <p>13 MR. SHORE: Please.</p> <p>14 MR. KERR: To the extent you can</p> <p>15 answer the question without revealing</p> <p>16 discussions that happened in mediation --</p> <p>17 let me read the question again.</p> <p>18 To the extent you can answer the</p> <p>19 question without disclosing anything that</p> <p>20 occurred in the mediation, that's fine.</p> <p>21 Again, Chris --</p> <p>22 A. It was part of the --</p> <p>23 MR. KERR: Chris, if you're asking</p> <p>24 about the FGIC Settlement Agreement and</p> <p>25 you're referring us to why is it this way</p>	<p>1 L. Kruger</p> <p>2 in the FGIC Settlement Agreement, I think</p> <p>3 that's a fair question.</p> <p>4 So -- but if you're going to be</p> <p>5 talking more broadly about what was the</p> <p>6 discussion at the mediation, I'm going to</p> <p>7 direct him not to answer. If you're going</p> <p>8 to be talking about what is in the plan</p> <p>9 confirmation, that is not what we're here</p> <p>10 for, as well.</p> <p>11 A. It was part of the negotiation of the</p> <p>12 settlement agreement in the mediation.</p> <p>13 Q. And what were the reasons that the</p> <p>14 debtors were willing to proceed or ResCap, LLC</p> <p>15 was willing to proceed with the settlement</p> <p>16 agreement in which it didn't fix its claim, the</p> <p>17 claim asserted by FGIC against it?</p> <p>18 MR. KERR: Again, on that question,</p> <p>19 I'm going to direct him not to answer due</p> <p>20 to the confidentiality provision.</p> <p>21 BY MR. SHORE:</p> <p>22 Q. So you're not going to testify at all</p> <p>23 as to why the claim is left unliquidated at</p> <p>24 ResCap, LLC in the event that the plan doesn't</p> <p>25 close?</p>
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<p>1 L. Kruger</p> <p>2 MR. KERR: Chris, you can ask him --</p> <p>3 you can show him the settlement agreement,</p> <p>4 ask him what's your understanding of why</p> <p>5 this is. And if you can answer that</p> <p>6 question without revealing discussions in</p> <p>7 the mediation, you can answer that.</p> <p>8 MR. SHORE: Well, look, I've been</p> <p>9 avoiding making speeches, unlike some</p> <p>10 others at the table. I don't agree that</p> <p>11 you can come in and take the position that</p> <p>12 the agreement was negotiated at arm's</p> <p>13 length, but then say you're not entitled to</p> <p>14 ask any questions with respect to what I</p> <p>15 meant by arm's lengths, and we'll get to</p> <p>16 those questions.</p> <p>17 You guys can take whatever positions</p> <p>18 you want, but you can't take a sword and a</p> <p>19 shield. I'm here on the FGIC Settlement</p> <p>20 Agreement.</p> <p>21 BY MR. SHORE:</p> <p>22 Q. If you turn to Article III, am I</p> <p>23 correct that Article or Section 3.01 describes</p> <p>24 the two scenarios in which -- in which the</p> <p>25 claims that FGIC has asserted at ResCap, LLC</p>	<p>1 L. Kruger</p> <p>2 will be treated?</p> <p>3 A. Yes.</p> <p>4 Q. And in one scenario they get an</p> <p>5 allowed general unsecured claim of 331 million;</p> <p>6 right?</p> <p>7 MR. KERR: Objection.</p> <p>8 A. I don't see that in 3.01.</p> <p>9 Q. They get -- it gets broken up into</p> <p>10 the allocation between ResCap, LLC, GMACM and</p> <p>11 RFC.</p> <p>12 A. Uh-huh.</p> <p>13 Q. All right.</p> <p>14 So there's also the scenario in which</p> <p>15 the plan is not co-effective. Okay.</p> <p>16 And then it says down at the -- it's</p> <p>17 five lines up from the bottom. "FGIC reserves</p> <p>18 all rights to assert general unsecured claims</p> <p>19 against each of ResCap, LLC, GMACM and RFC, as</p> <p>20 reflected in the proofs of claim, with all</p> <p>21 claims by FGIC including any FGIC allowed</p> <p>22 claims, or otherwise against each such entity</p> <p>23 capped each case in the amount of 596 million."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>

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<p>1 L. Kruger</p> <p>2 Q. Okay.</p> <p>3 First of all, in the event that the</p> <p>4 plan doesn't go effective -- I think we've gone</p> <p>5 through this -- the total amount of claims</p> <p>6 asserted at RFC and GMACM totals 596 million;</p> <p>7 right?</p> <p>8 A. Yes.</p> <p>9 MR. KERR: Objection.</p> <p>10 BY MR. SHORE:</p> <p>11 Q. And there are no RMBS trust claims at</p> <p>12 that point. They've been released; right?</p> <p>13 A. Yes.</p> <p>14 Q. So the maximum amount that -- okay.</p> <p>15 Let's break this even further.</p> <p>16 What do you understand to be the</p> <p>17 theory by which FGIC has asserted in either its</p> <p>18 complaint or the proof of claim with respect to</p> <p>19 why it has a claim at ResCap, LLC?</p> <p>20 MR. KERR: Again, you can answer that</p> <p>21 question again without revealing</p> <p>22 communications with counsel.</p> <p>23 A. They argue alter ego may be aiding</p> <p>24 and abetting.</p> <p>25 Q. And you say "may be aiding and</p>	<p>1 L. Kruger</p> <p>2 abetting," what are you referring to?</p> <p>3 A. I mean that would be part of their</p> <p>4 claim.</p> <p>5 Q. When you say you think that would be</p> <p>6 "part of their claim," would that be something</p> <p>7 you read in the complaint?</p> <p>8 A. I think I read that in the complaint.</p> <p>9 Q. Okay.</p> <p>10 And what about the proof of claim?</p> <p>11 Are you aware of whether there's any statement,</p> <p>12 any assertion of an aiding and abetting theory</p> <p>13 against Res --</p> <p>14 A. I have to go back and read the proof</p> <p>15 of claim.</p> <p>16 Q. Let me just finish my question.</p> <p>17 A. Sorry.</p> <p>18 Q. Are you aware of any assertion of an</p> <p>19 aiding and abetting claim in the FGIC proof of</p> <p>20 claim, at least as it pertains to ResCap, LLC?</p> <p>21 A. I don't see those words in the actual</p> <p>22 proof of claim that you submitted earlier, I</p> <p>23 guess, as No. 12.</p> <p>24 Q. So what do you understand to be the</p> <p>25 maximum liability in the event that ResCap --</p>
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<p>1 L. Kruger</p> <p>2 sorry -- in the event that the plan does not</p> <p>3 close? And when I say maximum liability, at</p> <p>4 ResCap, LLC.</p> <p>5 A. 596.</p> <p>6 Q. All right.</p> <p>7 And under the Settlement Agreement,</p> <p>8 ResCap, LLC has reserved all its rights to</p> <p>9 argue that it doesn't owe anything?</p> <p>10 A. Owe that money.</p> <p>11 Q. Right.</p> <p>12 You said before, though, that the</p> <p>13 claim in the plan setting is getting allowed at</p> <p>14 331?</p> <p>15 MR. KERR: Objection.</p> <p>16 BY MR. SHORE:</p> <p>17 Q. Why do I have the wrong number? Do I</p> <p>18 have the wrong number?</p> <p>19 A. I think it's 337.</p> <p>20 Q. 337. Yes. Sorry. My eyes are gone.</p> <p>21 Okay.</p> <p>22 But it gets allowed at 337 in the</p> <p>23 context of the plan being confirmed?</p> <p>24 A. Correct.</p> <p>25 Q. Okay.</p>	<p>1 L. Kruger</p> <p>2 Does that 337 reflect just a view of</p> <p>3 management, you -- as advised by the lawyers</p> <p>4 that that's the liability for an alter ego</p> <p>5 theory; in other words, one way to look at this</p> <p>6 is that if you looked at the allowance of 337</p> <p>7 versus a total maximum liability of 596, that</p> <p>8 represents more than a 50 percent likelihood</p> <p>9 that if you litigated it to conclusion, that</p> <p>10 ResCap, LLC would be held liable for the debts</p> <p>11 of GMACM and RFC?</p> <p>12 MR. KERR: Objection.</p> <p>13 A. Is there a question in there?</p> <p>14 Q. Yes.</p> <p>15 First of all, is that the proper way</p> <p>16 of looking at it?</p> <p>17 A. I think the way I looked at the, if</p> <p>18 that's the question that you're asking, with</p> <p>19 respect to the plan being confirmed, then it</p> <p>20 seems to be that the way to think about it is</p> <p>21 in the context of the global settlement and the</p> <p>22 mediation process.</p> <p>23 And we came to a conclusion and I</p> <p>24 came to a conclusion myself that it was not an</p> <p>25 appropriate for there to be a FGIC claim at</p>

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<p>1 L. Kruger</p> <p>2 ResCap, because they had alleged theories why</p> <p>3 they should have claims at the ResCap level and</p> <p>4 theories why they should have claims against</p> <p>5 Ally.</p> <p>6 So it seemed to be not inappropriate</p> <p>7 for them to have a claim against ResCap in the</p> <p>8 context of a confirmed plan, although I really</p> <p>9 think in part it's a planned confirmation</p> <p>10 issue; but, nonetheless, that's why it came</p> <p>11 out.</p> <p>12 Q. But what do you mean by it would be</p> <p>13 not -- was it not inappropriate to give them a</p> <p>14 claim on account of they had claims against</p> <p>15 Ally.</p> <p>16 I don't understand what that means.</p> <p>17 A. Well, there is an Ally settlement as</p> <p>18 part of the global claim settlement, global</p> <p>19 claim agreement. And I think and my thought</p> <p>20 was that in light of that and in view of the</p> <p>21 fact that, in my mind, the prospect of</p> <p>22 litigating with FGIC over the proof of claims</p> <p>23 on alter ego theories would be a unfortunate</p> <p>24 outcome because we would spend years in</p> <p>25 litigation with uncertain results, and that the</p>	<p>1 L. Kruger</p> <p>2 global plan agreement was a far better outcome.</p> <p>3 And part of that global plan</p> <p>4 agreement was an acknowledgment that they're</p> <p>5 entitled to a claim against ResCap.</p> <p>6 Q. So let me ask it this way.</p> <p>7 Do you believe that \$337 million</p> <p>8 claim at ResCap outside the context of the</p> <p>9 global settlement would be an appropriate claim</p> <p>10 amount?</p> <p>11 MR. KERR: Objection.</p> <p>12 A. I haven't considered that, no.</p> <p>13 Q. Okay.</p> <p>14 What was the reason you didn't just</p> <p>15 agree to fix the liability at 337 under all</p> <p>16 circumstances?</p> <p>17 MR. KERR: Objection. Again, if you</p> <p>18 can -- again, I don't want you to disclose</p> <p>19 anything that was discussed in the</p> <p>20 mediation, you can answer that question</p> <p>21 without disclosing what was discussed in</p> <p>22 the mediation.</p> <p>23 A. It was part of the mediation in the</p> <p>24 global settlement agreement. It's hard for me</p> <p>25 to separate out.</p>
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<p>1 L. Kruger</p> <p>2 Q. You said before that it was</p> <p>3 compensating for their claims against Ally.</p> <p>4 What did you mean about that?</p> <p>5 A. Well, they alleged that they had</p> <p>6 claims against Ally.</p> <p>7 Q. So?</p> <p>8 A. Domination control of ResCap, Ally is</p> <p>9 paying \$2.1 billion to settle these claims.</p> <p>10 They are looking for releases from FGIC, as</p> <p>11 well. It's not inappropriate for part of the</p> <p>12 proceeds of their contribution to be used to</p> <p>13 satisfy the FGIC claims.</p> <p>14 Q. Okay.</p> <p>15 Well, did GMACM contribute more</p> <p>16 claims or give more claims to FGIC in the event</p> <p>17 of the settlement?</p> <p>18 Its claim is fixed; right?</p> <p>19 A. When you say it's fixed, I'm not sure</p> <p>20 I'm following that.</p> <p>21 Q. Okay.</p> <p>22 The claim against GMACM that you're</p> <p>23 allowing FGIC is the same claim whether the</p> <p>24 plan is confirmed or not; right?</p> <p>25 A. It's 596.</p>	<p>1 L. Kruger</p> <p>2 Q. Right.</p> <p>3 Well, 596 is combined for both GMACM</p> <p>4 and RFC; right?</p> <p>5 A. Correct.</p> <p>6 Q. Okay.</p> <p>7 Well, let's just ask it that way.</p> <p>8 And it's 596, whether or not the plan is</p> <p>9 confirmed; right?</p> <p>10 MR. KERR: Objection.</p> <p>11 MR. WYNNE: Objection.</p> <p>12 A. I don't think I can answer that</p> <p>13 outside of the context of the mediation.</p> <p>14 Q. So what is it? You're here as the</p> <p>15 business person. What is the claim that FGIC</p> <p>16 has against GMACM in the event that the plan is</p> <p>17 confirmed or is not confirmed?</p> <p>18 A. That was just set forth in the</p> <p>19 settlement agreement.</p> <p>20 Q. Okay.</p> <p>21 What is it? What is your business</p> <p>22 understanding?</p> <p>23 A. My business understanding is that</p> <p>24 those claims, if the plan is not confirmed,</p> <p>25 right, is that those allocations are, in part,</p>

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<p>1 L. Kruger 2 based upon the governing agreements under the 3 trusts and FGIC and the debt. 4 Q. Okay. 5 And if it isn't confirmed -- or, 6 sorry, if it is confirmed? 7 A. Then if it is confirmed, then FGIC 8 does get a claim against ResCap. 9 Q. Okay. 10 But why -- when you say "ResCap," you 11 mean ResCap, LLC? 12 A. LLC. 13 Q. Okay. 14 But why would ResCap, LLC be the one 15 giving the claim in the event that there is a 16 confirmation? 17 MR. KERR: Objection. 18 A. Again, Chris, that's part of the 19 global settlement that was agreed to during the 20 course of the mediation. 21 Q. Okay. 22 Let me just ask it this way. Is what 23 you're saying is that this is the way in which 24 FGIC gets a direct or gets a piece of the Ally 25 settlement by resolving the claim -- resolving</p>	<p>1 L. Kruger 2 its claims and signing a plan support 3 agreement? 4 MR. KERR: Again, you can answer that 5 question without revealing anything that 6 was discussed in the mediation, you can do 7 so. 8 A. Well, it comes out of the mediation. 9 It's in the context of the global settlement 10 where the parties agreed to an allocation among 11 themselves as to what would they would hope 12 their outcomes would be as set forth in the 13 appendix to the PSA and term sheet. 14 And this was a portion of the way to 15 achieve the result and a way that we thought 16 was fair and reasonable to all the parties. 17 Q. So I take it that the allowance -- so 18 if there's not an Ally settlement, there would 19 be no plan confirmed; right? 20 A. Correct. 21 Q. And in that case, nobody would need 22 to be dividing up the Ally contribution; right? 23 Because there wouldn't be one? 24 A. There wouldn't be one. 25 Q. Right.</p>
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<p>1 L. Kruger 2 So I just need to know, is your view 3 that the 337 would stay the same, go up, go 4 down, in the event that the debtors were 5 negotiating with FGIC for an allowance of the 6 claim at ResCap, LLC? 7 MR. KERR: Objection. 8 A. I have no idea. 9 Q. Are you aware that from time to time 10 the debtors, their counsel, even the 11 prepetition debtors expressed views as to the 12 likelihood that any of the RMBS trust claimants 13 or monoline claimants could pierce the 14 corporate veil? 15 A. I've had discussions with my counsel 16 about piercing the corporate veil, alter ego 17 theories and the like. I've taken those into 18 consideration. It's part of my judgment as to 19 why I think this settlement agreement is an 20 appropriate one. 21 Q. Are you aware from time to time the 22 debtors have published waterfall analyses that 23 have shown that there would be no RMBS or 24 monoline claims allowed at the ResCap, LLC 25 level?</p>	<p>1 L. Kruger 2 MR. KERR: Objection. 3 A. I have no idea. 4 Q. Were you involved in any discussions 5 with the financial advisors or the financial 6 teams at ResCap, LLC, to discuss the -- the 7 ability of any RMBS trust or monoline to assert 8 claims at ResCap, LLC? 9 MR. KERR: And, again, I don't want 10 you to reveal any communications, either 11 privileged communications or communications 12 in the context of the confidentiality. You 13 can answer that question "yes" or "no," if 14 you can. 15 A. Yes. 16 Q. And what was your involvement? 17 A. I participated in presentations by my 18 counsel, financial advisors, and the like 19 discussing alter ego theories, piercing 20 corporate veil theories. I took that into 21 consideration in the process of litigating with 22 respect to those and the absence of the global 23 settlement and what that would mean to 24 everybody. 25 And it's part of what informed my</p>

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<p>1 L. Kruger 2 decision that this was a good idea. 3 Q. And were you aware -- were you 4 involved in the determination to reflect in 5 those waterfall analyses a zero recovery for 6 RMBS and monolines at ResCap, LLC? 7 MR. KERR: Objection. Assumes facts 8 not in evidence. 9 A. No. 10 Q. All right. 11 You want the facts in evidence? 12 (Kruger's Exhibit 13, Documents, 13 was marked for identification.) 14 MR. KERR: Chris, can I just ask you, 15 were these -- what were these documents? 16 MR. SHORE: These were from a prior 17 production. This was in connection with 18 the RMBS settlement. It's marked 19 professional eyes only, so let's keep that 20 in mind when you guys are looking at it. 21 MR. KERR: Chris, I was not involved 22 with the RMBS proceeding. I don't know 23 under what kind of confidentiality 24 restrictions these were produced. 25 MR. SHORE: I'm saying, just make</p>	<p>1 L. Kruger 2 sure they stay with outside professional 3 eyes only. 4 MR. KERR: Do you know whether they 5 can be used outside the context of the 6 RMBS? 7 MR. SHORE: I don't know. I don't 8 need to be able to use them to ask the 9 witness questions. 10 MR. KERR: Okay. I just want to make 11 sure, Chris. Again, I have not seen this 12 document before. I don't know in what kind 13 of confidentiality it was produced under. 14 If you want go ahead and do that, 15 that's your call. I'll just tell you I 16 just don't know and that's why I was 17 asking. 18 MR. SHORE: Okay. Well, you had made 19 a foundation question about assuming facts 20 not in evidence. I assumed you had an 21 understanding as to what the record was 22 with respect to the waterfalls that have 23 been presented starting with the board 24 meeting and working over the last year. 25 What you're telling me is you didn't</p>
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<p>1 L. Kruger 2 really have a basis to assert that such 3 that I don't need to go through the 4 waterfall analyses to show that 5 consistently over time the debtors have 6 always reflected that there would not be a 7 recovery at ResCap, LLC by any monoline or 8 RMBS trust claimant. I don't have to go 9 through it. 10 We're on a time limit with the 11 witness. I won't do that. But I'm going 12 to ask you when we get to a hearing on this 13 and I ask that question, please inform 14 yourself as to what the facts are before 15 you make that objection. Okay? 16 MR. KERR: Okay. And I'm going to 17 say this, Chris. The document you just 18 gave me is from May 9, 2012, which predated 19 the bankruptcy hearing. 20 MR. SHORE: No question. What I'm 21 saying is, we can start there and we can 22 work through all the waterfall analyses 23 both coming into bankruptcy and through and 24 all the way until the present discussions. 25 Okay. So that's all I'm saying. That's</p>	<p>1 L. Kruger 2 the earliest one I found. 3 Okay. And then we can go through the 4 pleadings in which the debtors have 5 represented that they don't believe that 6 there's any liability at ResCap, LLC. 7 BY MR. SHORE: 8 Q. Let me ask you this question. 9 Have you ever seen a waterfall 10 analysis leading up to the mediation in which 11 ResCap or any of its -- ResCap, LLC or any of 12 its subsidiaries was reflecting that the RMBS 13 claimants or any monoline would be getting an 14 allowed claim at ResCap, LLC? 15 MR. KERR: Are you talking prior to 16 the mediation? 17 BY MR. SHORE: 18 Q. Prior to the mediation. That's what 19 I said. 20 A. They didn't exist. I haven't seen 21 those. 22 Q. Okay. 23 But you haven't come across any of 24 those in connection with your -- 25 A. No.</p>

<p style="text-align: right;">Page 178</p> <p>1 L. Kruger</p> <p>2 Q. Okay.</p> <p>3 And what role, if any, have you</p> <p>4 played in the filing of any pleadings in which</p> <p>5 ResCap, LLC's liability on either an alter ego</p> <p>6 or veil piercing or subsequent consolidation</p> <p>7 basis has been discussed by the debtors?</p> <p>8 MR. KERR: Objection.</p> <p>9 A. I think I've said before, all I think</p> <p>10 I can say about that is I had conversations</p> <p>11 with my counsel and my advisors as to the veil</p> <p>12 piercing arguments and the alter-ego</p> <p>13 arrangements, and I've come to my own</p> <p>14 conclusion with respect to them.</p> <p>15 Q. Are you aware that -- the counsel is</p> <p>16 Morrison & Foerster; right?</p> <p>17 A. Yes.</p> <p>18 Q. And are you aware that counsel has</p> <p>19 made public statements as to their views with</p> <p>20 respect to what the likelihood is that that</p> <p>21 would happen?</p> <p>22 A. I'm not surprised.</p> <p>23 Q. Okay.</p> <p>24 And do you understand what they have</p> <p>25 expressed in that regard?</p>	<p style="text-align: right;">Page 179</p> <p>1 L. Kruger</p> <p>2 A. No.</p> <p>3 Q. Let me just read you a statement and</p> <p>4 see whether it's consistent or completely at</p> <p>5 odds with what you've been talking about with</p> <p>6 your lawyers.</p> <p>7 This is from the ResCap or the</p> <p>8 debtor's reply to the objection of Junior</p> <p>9 Secured Noteholders, the Motion for Approval of</p> <p>10 the RMBS Settlement Agreements. Let me just</p> <p>11 read it for the record. It's Docket No. 3221.</p> <p>12 "ResCap, LLC, of course, has little</p> <p>13 exposure to liability, only on an alter ego or</p> <p>14 a corporate veil piercing theories, and also as</p> <p>15 no assets and so likely will not face future</p> <p>16 litigation."</p> <p>17 Is that consistent with or at odds</p> <p>18 with the general tenor of the discussions</p> <p>19 you've been having about the likelihood that</p> <p>20 ResCap, LLC might be viable on a veil piercing</p> <p>21 or alter ego theory?</p> <p>22 MR. KERR: I will object to that</p> <p>23 question to the extent it invades a</p> <p>24 privilege. You want to ask him his</p> <p>25 understanding.</p>
<p style="text-align: right;">Page 180</p> <p>1 L. Kruger</p> <p>2 MR. SHORE: Sure.</p> <p>3 MR. KERR: If you're asking about</p> <p>4 conversations with counsel, and if you ask</p> <p>5 it that way, I will direct the witness not</p> <p>6 to answer.</p> <p>7 BY MR. SHORE:</p> <p>8 Q. Is it consistent with your</p> <p>9 understanding that ResCap faces little, if any,</p> <p>10 liability on alter ego or veil piercing</p> <p>11 theories?</p> <p>12 MR. WYNNE: Objection.</p> <p>13 MR. KERR: Objection.</p> <p>14 A. As a business person understanding</p> <p>15 the arguments for why people would say that,</p> <p>16 it's still my considered opinion that a better</p> <p>17 outcome is a settlement agreement --</p> <p>18 Q. And you wouldn't --</p> <p>19 MR. KERR: Let him finish his answer.</p> <p>20 A. Because the alternative of trying to</p> <p>21 prove and argue against a veil piercing</p> <p>22 argument or an alter ego argument would be both</p> <p>23 time consuming, would destroy the global</p> <p>24 settlement agreement, would not, in my mind, be</p> <p>25 sensible or benefit the creditors of this</p>	<p style="text-align: right;">Page 181</p> <p>1 L. Kruger</p> <p>2 estate or the estates.</p> <p>3 Q. Well, you wouldn't be allowing claims</p> <p>4 that you thought were illegitimate claims just</p> <p>5 to foster a settlement, would you?</p> <p>6 MR. KERR: Objection.</p> <p>7 A. What do you mean? I'm not sure what</p> <p>8 you mean.</p> <p>9 Q. Well you wouldn't, for example, if</p> <p>10 FGIC said I'm only going to settle if you give</p> <p>11 me a secured claim at ResCap, LLC, that</p> <p>12 wouldn't have been something in your</p> <p>13 consideration; right?</p> <p>14 A. I would consider whatever a party</p> <p>15 suggests was appropriate for them to be part of</p> <p>16 the process of choosing a global settlement</p> <p>17 agreement.</p> <p>18 Q. Okay.</p> <p>19 So why is the global settlement so</p> <p>20 important here?</p> <p>21 A. I think it's very important, because</p> <p>22 it does seemed to me that the alternative to</p> <p>23 the global settlement is no Ally contribution</p> <p>24 of \$2.1 billion, which I believe is a lot of</p> <p>25 money; secondly, that the outcome of no Ally</p>

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<p>1 L. Kruger</p> <p>2 settlement and no global settlement agreement</p> <p>3 would mean that the parties themselves, all the</p> <p>4 inter-creditor issues would come to the forth</p> <p>5 creditors would be suing each other, creditors</p> <p>6 would all be suing ResCap. This case would go</p> <p>7 on forever. Professional fees and the costs of</p> <p>8 administering this estate are enormous.</p> <p>9 And it seems to me that that will be</p> <p>10 to the detriment of all competitors. And I</p> <p>11 think that's not helpful. I think in my</p> <p>12 business judgment this is a far better</p> <p>13 alternative.</p> <p>14 Q. So in your view that you would</p> <p>15 consider what anybody asked you for a claim</p> <p>16 amount, if that --</p> <p>17 A. That's why I asked him whether</p> <p>18 Ms. Lincoln was happy or -- I don't understand</p> <p>19 that. You can't ask me that question that way.</p> <p>20 Q. Let me ask you the question.</p> <p>21 Are you saying then that in order to</p> <p>22 allow that global settlement with all what you</p> <p>23 believed to be the important benefits of that</p> <p>24 global settlement to go forward, you'd give a</p> <p>25 claim to somebody if they wanted it in exchange</p>	<p>1 L. Kruger</p> <p>2 for the support for that settlement?</p> <p>3 MR. KERR: Objection.</p> <p>4 A. Of course not.</p> <p>5 Q. Okay.</p> <p>6 So what are the criteria you apply to</p> <p>7 determine whether or not they should be getting</p> <p>8 a claim?</p> <p>9 A. The same one --</p> <p>10 MR. KERR: Objection. Asked and</p> <p>11 answered.</p> <p>12 A. The same one I just gave before. In</p> <p>13 my judgment, the arguments as to whether or not</p> <p>14 the claims of FGIC or the trust should be</p> <p>15 equitably subordinated, could be subordinated</p> <p>16 under the Bankruptcy Code, whether alter ego</p> <p>17 arguments are possible, whether aiding and</p> <p>18 abetting arguments are possible, all of those I</p> <p>19 believe are the subject of litigation that</p> <p>20 would be time consuming, costly, destroy the</p> <p>21 global settlement agreement, and ultimately not</p> <p>22 be for the benefit of the creditors for this</p> <p>23 estate or for the estate of which I'm</p> <p>24 responsible.</p> <p>25 So, in my mind, a global settlement</p>
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<p>1 L. Kruger</p> <p>2 agreement is a far better outcome.</p> <p>3 Q. I got time consuming. We're all</p> <p>4 caught up in time consuming right now. I want</p> <p>5 to talk about the merits. The merits.</p> <p>6 Does a \$331 million claim at ResCap,</p> <p>7 LLC reflect, in your view, the merits of</p> <p>8 litigating a \$596 million claim to conclusion?</p> <p>9 MR. KERR: Objection.</p> <p>10 MR. WYNNE: Objection. Asked and</p> <p>11 answered. Mischaracterizes his testimony.</p> <p>12 A. I think I've answered that question.</p> <p>13 Q. Answer it again, please.</p> <p>14 MR. KERR: Objection. Asked and</p> <p>15 answered.</p> <p>16 BY MR. SHORE:</p> <p>17 Q. That's your objection.</p> <p>18 You can answer it again.</p> <p>19 A. In my mind, as I've had said before,</p> <p>20 I think the \$337 million claim in the context</p> <p>21 of the global settlement agreement is an</p> <p>22 appropriate resolution as part of the mosaic of</p> <p>23 the global settlement agreement and is</p> <p>24 appropriate under the circumstances as</p> <p>25 reasonable and appropriate.</p>	<p>1 L. Kruger</p> <p>2 Q. That wasn't my question. That's why</p> <p>3 I wanted you to answer my question.</p> <p>4 Does \$337 million reflect your</p> <p>5 understanding of the likely result or within</p> <p>6 the range of results that would occur if</p> <p>7 independent of the global settlement FGIC</p> <p>8 pressed its \$596 million claim?</p> <p>9 A. I don't know the answer to that</p> <p>10 question.</p> <p>11 Q. Okay.</p> <p>12 Let's focus on the disclosure</p> <p>13 statement. Did you play any role in the</p> <p>14 drafting of the disclosure statement sections</p> <p>15 that discuss substantive consolidation?</p> <p>16 MR. KERR: Objection. Objection.</p> <p>17 This is not the time to be talking about</p> <p>18 disclosure of planned confirmation issues.</p> <p>19 All right? And if you're not going to</p> <p>20 focus on the FGIC settlement, I will direct</p> <p>21 him not to answer and Judge Glenn, I think,</p> <p>22 will support me down the line on it.</p> <p>23 BY MR. SHORE:</p> <p>24 Q. Well, let me ask you this question.</p> <p>25 Is there any basis for allowing FGIC</p>

<p style="text-align: right;">Page 186</p> <p>1 L. Kruger</p> <p>2 to assert a derivative liability claim at</p> <p>3 ResCap, LLC that would not exist for any other</p> <p>4 creditor of RFC? Are you aware of any factual</p> <p>5 distinction in the assertion of their claims at</p> <p>6 ResCap, LLC?</p> <p>7 A. I can't answer that question.</p> <p>8 Q. And what about with respect to GMACM,</p> <p>9 are you aware of any factual basis under which</p> <p>10 FGIC should be able to assert a claim at</p> <p>11 ResCap, LLC that makes them any different than</p> <p>12 any other creditor of GMACM Mortgage?</p> <p>13 A. I have not read the 6500 file proofs</p> <p>14 of claim, so I don't know how to answer that</p> <p>15 question.</p> <p>16 Q. Okay.</p> <p>17 So let's just deal with a</p> <p>18 hypothetical creditor, and you can preserve</p> <p>19 your objection and we'll see if we can get back</p> <p>20 to an actual fact.</p> <p>21 Hypothetically speaking, if another</p> <p>22 creditor at GMACM had asserted a claim at</p> <p>23 GMACM, is there any reason -- and asserted a</p> <p>24 claim at GMACM Mortgage -- I'm sorry,</p> <p>25 withdrawn.</p>	<p style="text-align: right;">Page 187</p> <p>1 L. Kruger</p> <p>2 Hypothetical creditor who asserts a</p> <p>3 claim at GMACM Mortgage and at ResCap, LLC, on</p> <p>4 alter ego theories, shouldn't they also be able</p> <p>5 to get a claim at G -- sorry -- at ResCap, LLC?</p> <p>6 MR. KERR: Objection. I'll direct</p> <p>7 him not to answer that question.</p> <p>8 MR. SHERWIN: On what basis?</p> <p>9 MR. KERR: That's a hypothetical. It</p> <p>10 has to do with planned confirmation. It</p> <p>11 has nothing to do with the FGIC Settlement</p> <p>12 Agreement.</p> <p>13 MR. SHORE: Let me take a quick</p> <p>14 break.</p> <p>15 MR. KERR: Sure.</p> <p>16 (Recess taken from 2:03 p.m. to</p> <p>17 2:09 p.m.)</p> <p>18 BY MR. SHORE:</p> <p>19 Q. All right.</p> <p>20 If you could turn to the Iridian</p> <p>21 (phonetic) factors, which start on page 11.</p> <p>22 We've gone through the -- with</p> <p>23 respect to A, right, the balance between the</p> <p>24 possibility of success, I take it that you're</p> <p>25 following your counsel's instruction that</p>
<p style="text-align: right;">Page 188</p> <p>1 L. Kruger</p> <p>2 you're not going to disclose any of the legal</p> <p>3 advice that your lawyers gave you with respect</p> <p>4 to the merits of the litigation that would</p> <p>5 ensue with FGIC or the RMBS trusts; right?</p> <p>6 MR. KERR: Let's put it this way. I</p> <p>7 don't want him to disclose communications</p> <p>8 he's had with counsel about those topics.</p> <p>9 You can ask him with a judgments he has</p> <p>10 reached after eliciting all this.</p> <p>11 MR. SHORE: But I don't get the</p> <p>12 substance of any of the advice that was</p> <p>13 given to you?</p> <p>14 MR. KERR: Right. It's privileged.</p> <p>15 BY MR. SHORE:</p> <p>16 Q. Let's go to the second, the</p> <p>17 likelihood of complex and protracted</p> <p>18 litigation. Let me just understand your</p> <p>19 business perspective on this.</p> <p>20 You've given a \$337 million claim at</p> <p>21 ResCap, LLC. I take it that that's not just</p> <p>22 because it would be a protracted litigation; in</p> <p>23 other words, you don't have -- you didn't base</p> <p>24 that on any view that the debtors would spend</p> <p>25 hundreds of millions of dollars litigating that</p>	<p style="text-align: right;">Page 189</p> <p>1 L. Kruger</p> <p>2 case; right, that proof of claim?</p> <p>3 MR. KERR: Objection.</p> <p>4 A. I don't know how much of that is</p> <p>5 spent in litigating that proof of claim, but it</p> <p>6 was part obviously of the global settlement</p> <p>7 agreement, and that's what motivated me in part</p> <p>8 to apply for a claim at the ResCap level. And</p> <p>9 the recognition that if there were to be</p> <p>10 litigation, there would obviously be no global</p> <p>11 settlement agreement, and the litigation would</p> <p>12 be both time consuming, costly and uncertain</p> <p>13 outcome.</p> <p>14 Q. Okay.</p> <p>15 Did you have any views, form any</p> <p>16 views of what it would take, how much it would</p> <p>17 cost to litigate the FGIC issues at the time</p> <p>18 you entered into the settlement agreement?</p> <p>19 A. I was aware that there had been MBIA</p> <p>20 litigation against ResCap prior to the filing</p> <p>21 of the petition and had gone for three and a</p> <p>22 half years. So I assumed this was going to be</p> <p>23 a lengthy litigation, as well. I believe in</p> <p>24 the MBIA more than a million documents were</p> <p>25 produced. This looks to me like complex and</p>

<p style="text-align: right;">Page 190</p> <p>1 L. Kruger</p> <p>2 long-term litigation.</p> <p>3 Q. Okay.</p> <p>4 Other than your knowledge that the</p> <p>5 MBIA litigation had gone on for three and a</p> <p>6 half years, did you have any other view, any</p> <p>7 other basis on which you formed your</p> <p>8 conclusions that it would be a complex and</p> <p>9 protracted litigation?</p> <p>10 A. I had read, I think I referred to</p> <p>11 before, the Carpenter Lipps report, memorandum.</p> <p>12 That's what informed my view.</p> <p>13 Q. Just so we are clear. I forgot to</p> <p>14 ask this question before.</p> <p>15 The NewOak analysis, Dr. D'Vari, did</p> <p>16 you have that before you decided to enter into</p> <p>17 the settlement agreement?</p> <p>18 A. No, I did not.</p> <p>19 Q. Okay.</p> <p>20 Had they performed any analysis for</p> <p>21 you prior to the entering into the settlement</p> <p>22 agreement?</p> <p>23 A. Not for me, no, they did not.</p> <p>24 Q. Okay.</p> <p>25 So I take it that your decision to</p>	<p style="text-align: right;">Page 191</p> <p>1 L. Kruger</p> <p>2 enter into the settlement agreement was not</p> <p>3 based in any way on any conclusions, either</p> <p>4 preliminary or final, that NewOak had reached</p> <p>5 with respect to the analysis set forth in</p> <p>6 Dr. D'Vari's report?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay.</p> <p>9 Then if you turn to paragraph 34.</p> <p>10 A. Yes.</p> <p>11 Q. The arm's length negotiations, and</p> <p>12 just so I'm clear. It's the debtor's position</p> <p>13 that the mediation confidentiality order in</p> <p>14 place prohibits the disclosure of any substance</p> <p>15 between FGIC or its counsel, on the one side,</p> <p>16 and the debtors and their counsel, on the other</p> <p>17 side, with respect to the FGIC claims?</p> <p>18 MR. KERR: Let me put it this way. I</p> <p>19 think Mr. Kruger has described the</p> <p>20 mediation, the involvement of people or</p> <p>21 whatever; but I think the communications,</p> <p>22 the substance, the back and forth, is</p> <p>23 subject to the confidentiality order</p> <p>24 entered by Judge Glenn, relied upon by</p> <p>25 Judge Peck and all the parties.</p>
<p style="text-align: right;">Page 192</p> <p>1 L. Kruger</p> <p>2 And so, in terms of the substance of</p> <p>3 the communications back and forth, that's</p> <p>4 confidential.</p> <p>5 BY MR. SHORE:</p> <p>6 Q. So what can you, beyond what you've</p> <p>7 testified to today, tell me about the arm's</p> <p>8 length nature of the negotiations with FGIC?</p> <p>9 MR. KERR: Again, just without</p> <p>10 disclosing any of the substance of the</p> <p>11 conversations.</p> <p>12 A. I can say that they were obviously</p> <p>13 experienced trustees, experienced counsel,</p> <p>14 experienced advisors, FGIC itself were</p> <p>15 well-represented, and all of that a process</p> <p>16 overseen by Judge Peck, looked to me like a</p> <p>17 very vigorous, robust process that went on for</p> <p>18 months.</p> <p>19 Q. And let me talk about it from the</p> <p>20 debtor's side.</p> <p>21 What can you testify to today, other</p> <p>22 than what you already have, to give any</p> <p>23 creditor, creditors within the case, leave</p> <p>24 aside the non-creditors in the case, comfort</p> <p>25 that the debtors didn't just roll over and give</p>	<p style="text-align: right;">Page 193</p> <p>1 L. Kruger</p> <p>2 a 330 million, \$337 million claim to FGIC in</p> <p>3 exchange for a signature on a plan support</p> <p>4 agreement?</p> <p>5 MR. KERR: Objection.</p> <p>6 A. Let me answer it this way.</p> <p>7 We were part of the mediation process</p> <p>8 all through it. I've only been part of the</p> <p>9 mediation process since the middle of February.</p> <p>10 And the mediation process, as I saw it myself,</p> <p>11 was one that was both vigorously contested by</p> <p>12 the parties. We had reviewed with people,</p> <p>13 parties, the pros and cons of their positions.</p> <p>14 We did that for Judge Peck, as well.</p> <p>15 So I was informed with respect to all</p> <p>16 of those kinds of issues, that presentations</p> <p>17 made to me by parties, all of that led me to</p> <p>18 believe that the global settlement agreement</p> <p>19 was a sensible thing to pursue and that this</p> <p>20 settlement agreement was an important part of</p> <p>21 that.</p> <p>22 Q. And that's the extent of your defense</p> <p>23 of a concern that creditors at ResCap, LLC</p> <p>24 might have that a 330 million, \$337 million</p> <p>25 claim was given in exchange for a plan support</p>

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<p>1 L. Kruger</p> <p>2 agreement to foster the global settlement</p> <p>3 which, of course, is important?</p> <p>4 MR. KERR: Objection.</p> <p>5 A. Because I believe that if there was</p> <p>6 no global settlement agreement and there would</p> <p>7 be no \$337 million claim available at ResCap,</p> <p>8 there would be no \$2.1 billion coming into the</p> <p>9 estate, there would be very little recovery for</p> <p>10 a creditors out of this estate, and ResCap,</p> <p>11 GMAC or RFC.</p> <p>12 Q. Well, let's peel that apart.</p> <p>13 First of all, if the global</p> <p>14 settlement didn't occur, the -- no one would</p> <p>15 release claims against Ally; right?</p> <p>16 A. Right.</p> <p>17 Q. And we would have every cause of</p> <p>18 action that was identified against Ally in the</p> <p>19 examiner's report would still be a valid claim</p> <p>20 that the debtors would bring that's not time</p> <p>21 barred; right?</p> <p>22 A. Examiner's report?</p> <p>23 Q. In the examiner's report. The</p> <p>24 examiner's report lays out all sorts of claims</p> <p>25 that the debtors could bring and might even win</p>	<p>1 L. Kruger</p> <p>2 against Ally; right?</p> <p>3 A. I'm not going to comment on the</p> <p>4 examiner's report. It's all hearsay whether</p> <p>5 the advised causes of action that are sensible</p> <p>6 to pursue or not is subject to a different</p> <p>7 conversation.</p> <p>8 Q. But the claims, whatever the claims</p> <p>9 are, whether you believe what Judge Gonzales</p> <p>10 said or whatever ResCap has looked at</p> <p>11 internally, the claims would still be there?</p> <p>12 A. Which claims are these?</p> <p>13 Q. The claims against Ally --</p> <p>14 A. Sure.</p> <p>15 Q. -- that you're trying to preserve</p> <p>16 again.</p> <p>17 Why does the -- what I don't</p> <p>18 understand is, why does the amount of the claim</p> <p>19 at ResCap, LLC go up or down depending upon the</p> <p>20 global settlement? I could understand that the</p> <p>21 recovery would go up. You're right. They will</p> <p>22 recover a lot more on their \$337 million claim</p> <p>23 in the event of a global settlement than they</p> <p>24 will in the event that these cases get</p> <p>25 converted. I get that.</p>
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<p>1 L. Kruger</p> <p>2 Why does the claim amount differ?</p> <p>3 MR. KERR: And, again, if you can</p> <p>4 answer that question without revealing what</p> <p>5 was discussed and agreed to in the</p> <p>6 confidential mediation.</p> <p>7 A. All I can say is that that claim</p> <p>8 amount results from the global settlement</p> <p>9 agreement.</p> <p>10 Q. And that's it?</p> <p>11 A. That's it.</p> <p>12 MR. SHORE: Okay.</p> <p>13 I have no further questions.</p> <p>14 Anybody else?</p> <p>15 MR. CARNEY: Mike Carney. I have</p> <p>16 about 10 minutes.</p> <p>17</p> <p>18 EXAMINATION BY MR. CARNEY:</p> <p>19 Q. Sir, I'm Michael Carney again from</p> <p>20 McKool Smith for Freddie Mac.</p> <p>21 The ResCap trust holding FGIC wrapped</p> <p>22 securities claims have claims against the</p> <p>23 debtors; is that correct?</p> <p>24 A. Sorry? Say that again.</p> <p>25 Q. The ResCap trust holding FGIC wrapped</p>	<p>1 L. Kruger</p> <p>2 securities have claims against the debtors; is</p> <p>3 that correct?</p> <p>4 A. Yes.</p> <p>5 Q. Okay.</p> <p>6 What's your understanding of these</p> <p>7 claims?</p> <p>8 A. What the trust claims are against the</p> <p>9 debtor?</p> <p>10 Q. Yes.</p> <p>11 A. Representation and warranty claims,</p> <p>12 indemnity and insurance claims. Also</p> <p>13 securities claims, rider claims.</p> <p>14 Q. Any others you can think of off the</p> <p>15 top of your head?</p> <p>16 A. No.</p> <p>17 Q. Okay.</p> <p>18 And FGIC has claims against the</p> <p>19 debtors, too; right?</p> <p>20 A. Yes.</p> <p>21 Q. And what's your understanding of the</p> <p>22 nature of those claims?</p> <p>23 A. FGIC has laid out funds on behalf of</p> <p>24 the debtors. The debtors has not reimbursed</p> <p>25 them for those expenditures. FGIC has also</p>

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<p>1 L. Kruger</p> <p>2 submitted claims against the debtor with</p> <p>3 respect to the funds that it advanced that the</p> <p>4 debtor has not responded to. So I assume they</p> <p>5 have money damage claims.</p> <p>6 Q. Okay.</p> <p>7 I think Exhibit 1 was the settlement</p> <p>8 agreement. I'd like to turn to that briefly.</p> <p>9 And I'd just like you to turn to Section 2.02</p> <p>10 of that.</p> <p>11 A. Yes.</p> <p>12 Q. And it just begins with the paragraph</p> <p>13 Trustees, just the first sentence where it</p> <p>14 says, "The trustees, in consultation with their</p> <p>15 advisors, shall have the sole -- shall have</p> <p>16 sole and exclusive authority to determine each</p> <p>17 payment amount payable to a trust, such</p> <p>18 denomination to be made in accordance with the</p> <p>19 allocation methodology set forth in Exhibit F</p> <p>20 hereto. The sum of all payment amounts shall</p> <p>21 not exceed \$253.3 million."</p> <p>22 A. Uh-huh.</p> <p>23 Q. The first question is: To your</p> <p>24 knowledge, will the trustees, if the settlement</p> <p>25 is approved, receive a set amount of</p>	<p>1 L. Kruger</p> <p>2 \$253.3 million?</p> <p>3 A. As a group, I would I assume so, yes.</p> <p>4 Q. So then what I just was curious about</p> <p>5 is if you have any understanding of this --</p> <p>6 A. Not to exceed.</p> <p>7 Q. Yes.</p> <p>8 Why is it phrased that the sum of all</p> <p>9 payments will not exceed 253.3 million?</p> <p>10 A. I'm not sure I know the answer</p> <p>11 sitting here.</p> <p>12 Q. Okay.</p> <p>13 But, to your knowledge, the cash</p> <p>14 payment, if the settlement is approved, of</p> <p>15 253.3 million, will go to the trustees; is that</p> <p>16 correct?</p> <p>17 A. I believe so.</p> <p>18 Q. All right. Thank you.</p> <p>19 Obviously, I don't want you to go</p> <p>20 into the substance of the mediation, but were</p> <p>21 you aware that the debtors, ResCap, was</p> <p>22 negotiating the amount the trust would receive</p> <p>23 in satisfaction of the trust policy claims?</p> <p>24 MR. KERR: Objection. Assumes facts</p> <p>25 not in evidence.</p>
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<p>1 L. Kruger</p> <p>2 A. No.</p> <p>3 Q. No. Okay.</p> <p>4 So was -- what is your idea of how</p> <p>5 that or -- so you're saying the 253.3 million</p> <p>6 amount was never on the negotiating table, to</p> <p>7 your knowledge?</p> <p>8 MR. KERR: Objection.</p> <p>9 A. Not for me, not to my knowledge.</p> <p>10 Q. Okay.</p> <p>11 MR. CARNEY: I don't believe -- has</p> <p>12 the D'Vari objection been marked yet? I</p> <p>13 don't believe it has. I'm sorry, the</p> <p>14 D'Vari declaration.</p> <p>15 MR. KERR: No, I don't think so.</p> <p>16 MR. CARNEY: Then I'd like to mark it</p> <p>17 as Exhibit -- what are we up to? 14.</p> <p>18 (Kruger's Exhibit 14, D'Vari</p> <p>19 Declaration, was marked for</p> <p>20 identification.)</p> <p>21 BY MR. CARNEY:</p> <p>22 Q. Do you recognize this declaration?</p> <p>23 A. Yes, I do.</p> <p>24 Q. And can you tell me why was it</p> <p>25 prepared?</p>	<p>1 L. Kruger</p> <p>2 A. It was prepared as part of the</p> <p>3 process of getting approval of the 9019 motion</p> <p>4 with respect to the FGIC settlement, but for</p> <p>5 Dr. D'Vari to provide an analysis of what the</p> <p>6 maximum lifetime collateral losses of FGIC</p> <p>7 trusts might be.</p> <p>8 Q. And why was that important?</p> <p>9 A. Because that prospective liability is</p> <p>10 what was being released as part of the FGIC</p> <p>11 settlement.</p> <p>12 Q. Okay.</p> <p>13 And so can you just explain -- this</p> <p>14 might be asking the same question a different</p> <p>15 way, but why are the losses to the RMBS trust</p> <p>16 important to you?</p> <p>17 A. Well, because those represent claims</p> <p>18 against the estates that I am CRO for, and I'm</p> <p>19 happy to have them go way.</p> <p>20 Q. Fair enough.</p> <p>21 And could you please turn to page 31</p> <p>22 of the D'Vari declaration. I'm sorry,</p> <p>23 paragraph 31. Paragraph 31 on page 9.</p> <p>24 Do you see here that it estimates the</p> <p>25 trustees's losses at a total lifetime</p>

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<p>1 L. Kruger</p> <p>2 collateral losses at around 5.4 billion?</p> <p>3 A. Yes.</p> <p>4 Q. Yes. Okay.</p> <p>5 MR. CARNEY: I don't believe that</p> <p>6 Mr. Holzer's affidavit has been marked, has</p> <p>7 it?</p> <p>8 All right. I'll mark that.</p> <p>9 (Kruger's Exhibit 15, Holzer</p> <p>10 Affidavit, was marked for</p> <p>11 identification.)</p> <p>12 BY MR. CARNEY:</p> <p>13 Q. Unfortunately, this looks as if the</p> <p>14 second page is missing, but this is Exhibit 10</p> <p>15 to the 9019 motion.</p> <p>16 And you can see on the top, you can</p> <p>17 see the case number and the doc number and the</p> <p>18 Holzer affirmation.</p> <p>19 MR. KERR: You'll see that it looks</p> <p>20 like the first page of the Holzer was not</p> <p>21 copied.</p> <p>22 (A Discussion was Held off the</p> <p>23 Record.)</p> <p>24 MR. CARNEY: Let's mark a clean copy.</p> <p>25 If we could disregard that one and just</p>	<p>1 L. Kruger</p> <p>2 replace it with this.</p> <p>3 MR. KERR: Well, actually, this is --</p> <p>4 this looks like it's a broader document.</p> <p>5 MR. CARNEY: It is, but we can</p> <p>6 only -- I'm only going to refer in this to</p> <p>7 the -- after the order to show cause, this</p> <p>8 portion of it.</p> <p>9 (Kruger's Exhibit 15, Holzer</p> <p>10 Affidavit, was remarked for</p> <p>11 identification.)</p> <p>12 BY MR. CARNEY:</p> <p>13 Q. Sorry about that. Bear with me.</p> <p>14 If you could just turn to the</p> <p>15 actual -- it's double-sided, so the first --</p> <p>16 the back side of the third page.</p> <p>17 And it begins with "Supreme Court of</p> <p>18 the State of New York," and it's called an</p> <p>19 affirmation.</p> <p>20 A. Right.</p> <p>21 Q. If you could turn to paragraph --</p> <p>22 first of all, do you recognize this document?</p> <p>23 A. Yes.</p> <p>24 Q. Okay.</p> <p>25 And do you agree that it was attached</p>
Page 204	Page 205
<p>1 L. Kruger</p> <p>2 as Exhibit 10 to the 9019 motion?</p> <p>3 A. I believe it was, yes.</p> <p>4 Q. Okay.</p> <p>5 And are you familiar with this</p> <p>6 document?</p> <p>7 A. I've read it.</p> <p>8 Q. Okay.</p> <p>9 And if you could please turn to</p> <p>10 paragraph 14 on page 6.</p> <p>11 A. Uh-huh.</p> <p>12 Q. It appears to me that -- I mean, here</p> <p>13 FGIC claims that there are total amount of</p> <p>14 596.5 million of claims against ResCap entities</p> <p>15 for -- which is equal to 342 million previously</p> <p>16 paid, plus a 253.3 million payment --</p> <p>17 253.3 million payment which would be paid under</p> <p>18 the settlement in settlement of all future</p> <p>19 claims; is that correct?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Okay.</p> <p>22 But then if you turn to paragraph 21</p> <p>23 of the Holzer affidavit or affirmation, when it</p> <p>24 discusses why the rehabilitation court should</p> <p>25 approve the settlement, it, FGIC, or Mr. Holzer</p>	<p>1 L. Kruger</p> <p>2 has estimated that there are \$789 million in</p> <p>3 claims currently pending against FGIC, as well</p> <p>4 as \$400 million in claims FGIC expects will</p> <p>5 arise in the future.</p> <p>6 Do you agree with that?</p> <p>7 MR. KERR: Objection. Do you agree?</p> <p>8 It's written in the document.</p> <p>9 BY MR. CARNEY:</p> <p>10 Q. Do you agree it's written in the</p> <p>11 document? Yes, certainly.</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 And my question is: Can you account</p> <p>15 for the difference in numbers in Dr. D'Vari's</p> <p>16 declaration of losses to the RMBS trustees of</p> <p>17 5.4 million, which I believe are all FGIC</p> <p>18 wrapped trusts, versus FGIC's estimated losses</p> <p>19 that total, I think around 1.1 billion?</p> <p>20 Do you --</p> <p>21 MR. KERR: Objection.</p> <p>22 BY MR. CARNEY:</p> <p>23 Q. Can you tell me why those two numbers</p> <p>24 are different?</p> <p>25 A. No.</p>

Page 206	Page 207
<p>1 L. Kruger</p> <p>2 Q. And you have no idea why they would</p> <p>3 be?</p> <p>4 A. No.</p> <p>5 All right. Just cover one more.</p> <p>6 When do you remember the, what we've been</p> <p>7 calling the FGIC commutation, when do you</p> <p>8 remember that first being discussed?</p> <p>9 MR. KERR: Objection. Asked and</p> <p>10 answered.</p> <p>11 A. March sometime.</p> <p>12 Q. March. Thank you.</p> <p>13 I can't remember from the beginning</p> <p>14 of the day.</p> <p>15 And do you know who suggested it</p> <p>16 originally?</p> <p>17 A. No.</p> <p>18 Q. You don't. You do not. Okay.</p> <p>19 And did the debtors have an opinion</p> <p>20 about the FGIC commutation once you became</p> <p>21 aware of it?</p> <p>22 MR. KERR: Objection.</p> <p>23 A. Happy to see it take place. I guess</p> <p>24 I'm not sure how to answer that question.</p> <p>25 Q. Strike that.</p>	<p>1 L. Kruger</p> <p>2 Did you personally have an opinion</p> <p>3 about it when you became aware of it?</p> <p>4 MR. KERR: Objection.</p> <p>5 A. Yes.</p> <p>6 Q. And what was that opinion?</p> <p>7 A. That if it could be accomplished in</p> <p>8 the context of a global settlement agreement,</p> <p>9 it would be helpful.</p> <p>10 Q. Uh-huh.</p> <p>11 But other than -- strike that.</p> <p>12 Is it your understanding that the</p> <p>13 FGIC computation was insisted upon as part of</p> <p>14 that global settlement?</p> <p>15 MR. KERR: Objection. On that, I</p> <p>16 will direct -- I think that's covered by</p> <p>17 the confidential mediation order, and I'll</p> <p>18 direct the witness not to answer that.</p> <p>19 BY MR. CARNEY:</p> <p>20 Q. And I assume you're going to abide by</p> <p>21 your counsel's direction?</p> <p>22 A. Yes.</p> <p>23 Q. Did you or did the debtors, rather --</p> <p>24 first we'll start with the debtors -- did the</p> <p>25 debtors do any substantive analysis of the FGIC</p>
Page 208	Page 209
<p>1 L. Kruger</p> <p>2 computation?</p> <p>3 MR. KERR: Objection. Asked and</p> <p>4 answered.</p> <p>5 A. No.</p> <p>6 Q. Okay.</p> <p>7 And just to close the circle one more</p> <p>8 time, and I -- if the FGIC computation were not</p> <p>9 part of a global settlement but everything else</p> <p>10 was, would it have mattered to you that the</p> <p>11 FGIC computation wasn't included as part of</p> <p>12 that settlement?</p> <p>13 MR. KERR: Objection. Asked and</p> <p>14 answered. You asked that question before.</p> <p>15 I objected to it as a hypothetical.</p> <p>16 MR. CARNEY: I understand. I just --</p> <p>17 he can answer.</p> <p>18 A. If everything else was in place and I</p> <p>19 didn't -- we didn't pay -- the \$253 million</p> <p>20 didn't get paid and the releases all took place</p> <p>21 and there was a consideration for them,</p> <p>22 everything else could have been perfect, yes.</p> <p>23 Q. You could have cared less?</p> <p>24 MR. CARNEY: Thank you. That's all I</p> <p>25 have.</p>	<p>1 L. Kruger</p> <p>2 FURTHER EXAMINATION BY MR. SHORE:</p> <p>3 Q. The assertion of this mediation</p> <p>4 privilege works both ways.</p> <p>5 First of all, what are the concerns</p> <p>6 the debtors have, if any, about disclosing what</p> <p>7 they said to people about the FGIC claims?</p> <p>8 MR. KERR: Are you asking Mr. Kruger</p> <p>9 or me?</p> <p>10 MR. CARNEY: Mr. Kruger.</p> <p>11 BY MR. SHORE:</p> <p>12 Q. Do you have any concerns about any of</p> <p>13 the substance of materials that passed from the</p> <p>14 debtors to FGIC should remain confidential?</p> <p>15 MR. KERR: Objection.</p> <p>16 A. I think they should.</p> <p>17 Q. Why?</p> <p>18 A. Because I think otherwise people who</p> <p>19 are participating in the mediation process</p> <p>20 would not have comfort in knowing that</p> <p>21 everything that they said and talked about was</p> <p>22 confidential.</p> <p>23 Q. So --</p> <p>24 A. That might have chilled the</p> <p>25 negotiation process.</p>

Page 210	Page 211
<p>1 L. Kruger</p> <p>2 Q. Okay.</p> <p>3 So are you saying that you would have</p> <p>4 been chilled in the negotiation process if you</p> <p>5 knew that ultimately some court might need to</p> <p>6 see what you said to people in the negotiation?</p> <p>7 MR. KERR: Objection.</p> <p>8 A. I don't know.</p> <p>9 Q. Can you think -- just answer yes or</p> <p>10 no. Can you think of something you said to</p> <p>11 FGIC in the mediation you wouldn't want Judge</p> <p>12 Glenn to see?</p> <p>13 MR. KERR: Objection. I'll direct</p> <p>14 him not to answer. That -- there's an</p> <p>15 existent order, Chris, directing the</p> <p>16 parties to comply with it. The fact that</p> <p>17 the debtors complied with an order, I don't</p> <p>18 understand where this is going.</p> <p>19 BY MR. SHORE:</p> <p>20 Q. Can you answer my question?</p> <p>21 A. No.</p> <p>22 Q. Okay.</p> <p>23 And has there been any consideration</p> <p>24 on the debtor's part to seek to have that</p> <p>25 confidentiality -- confidentiality order</p>	<p>1 L. Kruger</p> <p>2 modified now that you have an approved PSA?</p> <p>3 A. No.</p> <p>4 Q. Okay.</p> <p>5 And have you had any discussions with</p> <p>6 FGIC to see whether FGIC would be willing, now</p> <p>7 that the PSA is approved, of allowing the</p> <p>8 materials it gave to the debtors during the</p> <p>9 negotiations to be disclosed as part of the</p> <p>10 9019?</p> <p>11 MR. KERR: Did Mr. Kruger have those</p> <p>12 conversations?</p> <p>13 A. No.</p> <p>14 MR. SHORE: Nothing further.</p> <p>15</p> <p>16 FURTHER EXAMINATION BY MS. EATON:</p> <p>17 Q. How are you being compensated for</p> <p>18 your work as --</p> <p>19 A. Pursuant to the court order of March</p> <p>20 5th, I get paid \$895 an hour for a time period.</p> <p>21 And I have the right to request a success fee,</p> <p>22 whatever that might mean, at some point during</p> <p>23 the course of this process.</p> <p>24 Q. Have you made any request for a</p> <p>25 success fee?</p>
Page 212	Page 213
<p>1 L. Kruger</p> <p>2 A. Not yet.</p> <p>3 Q. Have you discussed the amounts of the</p> <p>4 success fee with anyone at ResCap?</p> <p>5 A. With anyone at ResCap?</p> <p>6 Q. Pardon me. At the debtor's?</p> <p>7 A. Yes.</p> <p>8 Q. What did you discuss in that regard?</p> <p>9 A. I discussed it with members of the</p> <p>10 board.</p> <p>11 Q. What did you discuss with members of</p> <p>12 the board about the success fee?</p> <p>13 MR. KERR: Again, if you had</p> <p>14 discussions outside the presence of</p> <p>15 counsel --</p> <p>16 A. Not outside the presence of counsel.</p> <p>17 Q. Have you settled on the terms of your</p> <p>18 success fee?</p> <p>19 A. No.</p> <p>20 Q. Have you discussed whether you would</p> <p>21 get any portion of a success fee -- let me</p> <p>22 start over.</p> <p>23 In your discussions with the board</p> <p>24 about your success fee, has it been tied in any</p> <p>25 way, directly or indirectly, to the approval of</p>	<p>1 L. Kruger</p> <p>2 the FGIC Settlement Agreement?</p> <p>3 A. No.</p> <p>4 Q. When you were being interviewed --</p> <p>5 you were interviewed prior to your appointment</p> <p>6 as chief restructuring officer?</p> <p>7 A. Yes, I was.</p> <p>8 Q. Who were you interviewed by?</p> <p>9 A. Members of the board of ResCap.</p> <p>10 Q. Do you remember who those people</p> <p>11 were?</p> <p>12 A. I think so. Some of them anyway.</p> <p>13 Certainly Jonathan Ilany, John Mack, Tom</p> <p>14 Marano. I don't recall who else might have</p> <p>15 been present.</p> <p>16 Q. During that interview process, did</p> <p>17 you discuss with any one or more of those</p> <p>18 people the status of the settlement discussions</p> <p>19 that were ongoing at that time?</p> <p>20 A. No.</p> <p>21 Q. You didn't discuss the mediation at</p> <p>22 all?</p> <p>23 A. I knew the mediation was ongoing, but</p> <p>24 I did not discuss it with them.</p> <p>25 Q. What, if anything, did any of those</p>

<p style="text-align: right;">Page 214</p> <p>1 L. Kruger</p> <p>2 individuals say to you about what the outcome</p> <p>3 that the debtors were seeking with respect to</p> <p>4 those negotiations?</p> <p>5 MR. KERR: This is while he was</p> <p>6 interviewed?</p> <p>7 BY MS. EATON:</p> <p>8 Q. Yes. Before he became chief</p> <p>9 restructuring officer.</p> <p>10 A. That their goal was to see a</p> <p>11 confirmed reorganization plan that treated</p> <p>12 creditors fairly in a reasonable time frame.</p> <p>13 Q. Did you discuss the FGIC wrapped</p> <p>14 trust at all?</p> <p>15 A. No.</p> <p>16 MS. EATON: That's it.</p> <p>17 MR. KERR: Anybody else?</p> <p>18 MR. KAUFMAN: I have a couple of</p> <p>19 questions.</p> <p>20</p> <p>21 EXAMINATION BY MR. KAUFMAN:</p> <p>22 Q. I just want to touch briefly,</p> <p>23 Mr. Kruger, on a couple of the things that</p> <p>24 Mr. Shore was asking you about.</p> <p>25 A. Uh-huh.</p>	<p style="text-align: right;">Page 215</p> <p>1 L. Kruger</p> <p>2 Q. You remember Mr. Shore asking you</p> <p>3 about the proof of claim filed by FGIC, which I</p> <p>4 think is Kruger Exhibit 12?</p> <p>5 A. Yes.</p> <p>6 Q. And --</p> <p>7 A. Give me a minute to find it without</p> <p>8 spilling my Coca-Cola.</p> <p>9 Ready.</p> <p>10 Q. Do you have that?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Okay.</p> <p>13 And Mr. Shore asked you in connection</p> <p>14 with that proof of claim whether you recalled</p> <p>15 it containing some recitation of an aiding and</p> <p>16 abetting claim.</p> <p>17 Do you remember that?</p> <p>18 A. Yes.</p> <p>19 Q. And I believe your answer was you</p> <p>20 don't remember or don't see that it contains</p> <p>21 the words "aiding and abetting."</p> <p>22 Do you remember that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay.</p> <p>25 In fact, let me direct your attention</p>
<p style="text-align: right;">Page 216</p> <p>1 L. Kruger</p> <p>2 to paragraph 32 of the proof of claim which</p> <p>3 appears on page 13.</p> <p>4 A. I have it.</p> <p>5 Q. Okay.</p> <p>6 And in the first sentence of that</p> <p>7 paragraph, it reads, "For the reasons discussed</p> <p>8 above in paragraphs 24 to 26, and further in</p> <p>9 FGIC's complaints, ResCap is jointly and</p> <p>10 severally liable to FGIC under a theory of</p> <p>11 alter ego liability for the harms FGIC has</p> <p>12 suffered from the fraudulently inducement</p> <p>13 committed by GMACM and RFC."</p> <p>14 Do you see that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. And that, do you agree that that</p> <p>17 sentence references an alter ego theory of</p> <p>18 liability?</p> <p>19 A. Correct.</p> <p>20 Q. The next sentence of the proof of</p> <p>21 claim states, "In addition, because GMACM and</p> <p>22 RFC were acting at the direction of ResCap,</p> <p>23 ResCap may be jointly and severally liable to</p> <p>24 FGIC for the harms FGIC has suffered from the</p> <p>25 fraudulent inducement committed by GMACM and</p>	<p style="text-align: right;">Page 217</p> <p>1 L. Kruger</p> <p>2 RFC."</p> <p>3 Do you see that?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Would you agree that that sentence,</p> <p>6 although not specifically containing the words</p> <p>7 "aiding and abetting," in fact, reflects the</p> <p>8 aiding and abetting theory that is contained in</p> <p>9 the 12 complaints filed by FGIC prior to the</p> <p>10 bankruptcy?</p> <p>11 MR. SHORE: Objection to form.</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 Speaking of those complaints, do you</p> <p>15 remember Mr. Shore asking you whether you could</p> <p>16 think of any differences between FGIC as a</p> <p>17 creditor and other creditors?</p> <p>18 Do you remember that line of</p> <p>19 questions?</p> <p>20 A. Yes.</p> <p>21 Q. Did every other creditor file</p> <p>22 complaints prior to the bankruptcy?</p> <p>23 A. No.</p> <p>24 Q. So that would be one way in which</p> <p>25 FGIC was distinct?</p>

<p style="text-align: right;">Page 218</p> <p>1 L. Kruger</p> <p>2 A. Yes.</p> <p>3 Q. Okay.</p> <p>4 A. 12 of them.</p> <p>5 MR. KAUFMAN: No further questions.</p> <p>6 MR. KERR: Other questions?</p> <p>7 I think we're done then.</p> <p>8 Thank you, everybody. I appreciate</p> <p>9 everybody working to keep it within the</p> <p>10 time restraints set by the judge.</p> <p>11 Thank you.</p> <p>12 (The deposition was concluded at</p> <p>13 2:40 p.m.)</p> <p>14 (The exhibits were retained by the</p> <p>15 court reporter.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19 <u>LEWIS KRUGER</u></p> <p>20</p> <p>21 Subscribed and sworn to before me</p> <p>22 this day of 2013.</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 219</p> <p>1 L. Kruger</p> <p>2</p> <p>3 CERTIFICATE</p> <p>4</p> <p>5 STATE OF NEW YORK)</p> <p>6) ss.:</p> <p>7 COUNTY OF NEW YORK)</p> <p>8</p> <p>9 I, THOMAS A. FERNICOLA, Registered</p> <p>10 Reporter and Notary Public within and for</p> <p>11 the State of New York, do hereby certify</p> <p>12 that the within is a true and accurate</p> <p>13 transcript of the proceedings held on</p> <p>14 July 11, 2013.</p> <p>15 That I am not related to any of the</p> <p>16 parties to this action by blood or</p> <p>17 marriage; and that I am in no way</p> <p>18 interested in the outcome of this matter.</p> <p>19 IN WITNESS WHEREOF, I have hereunto</p> <p>20 set my hand this 11th day of July, 2013.</p> <p>21</p> <p>22 <u>THOMAS A. FERNICOLA, RPR</u></p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 220</p> <p>1 L. Kruger</p> <p>2 ----- INDEX -----</p> <p>3 ATTORNEY PAGE</p> <p>4 Ms. Eaton 9</p> <p>5 Mr. Carney 99</p> <p>6 Mr. Shore 104</p> <p>7 Mr. Carney 196</p> <p>8 Mr. Shore 209</p> <p>9 Ms. Eaton 211</p> <p>10 Mr. KAUFMAN 214</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 221</p> <p>1 L. Kruger</p> <p>2 ----- EXHIBITS -----</p> <p>3 KRUGER'S</p> <p>4 DESCRIPTION PAGE LINE</p> <p>5 Exhibit 1 Settlement Agreement 11 25</p> <p>6 dated May 23, 2013,</p> <p>7 Exhibit 2 Document entitled 64 16</p> <p>8 Declaration of Lewis Kruger,</p> <p>9 Exhibit 3 Declaration of Lewis 78 14</p> <p>10 Kruger,</p> <p>11 Exhibit 4 Order Granting Debtor's 86 15</p> <p>12 Motion Pursuant to Rule 9019,</p> <p>13 Exhibit 5 Notice of Filing of 92 3</p> <p>14 Lewis Kruger's First Monthly Fee</p> <p>15 Report, Compensation for</p> <p>16 Professional Services Rendered and</p> <p>17 Reimbursement of Expenses Occurred,</p> <p>18 Exhibit 6 Document, Bates Nos. 95 19</p> <p>19 FGIC 901933899 through 34122,</p> <p>20 Exhibit 7 Document, Bates Nos. 95 22</p> <p>21 FGIC 901933813 through 33898,</p> <p>22 Exhibit 8 Document, Bates Nos. 95 25</p> <p>23 FGIC 901933760 through 33812,</p> <p>24 Exhibit 9 Document, Bates Nos. 96 5</p> <p>25 FGIC 901934123 through 34204,</p>

1 L. Kruger
2 ----- EXHIBITS (Cont'd) -----
3 KRUGER'S
4 DESCRIPTION PAGE LINE
5 Exhibit 10 Document, Bates Nos. 96 8
6 FGIC 901934258 through 34324,
7 Exhibit 11 Notice of Deposition, 103 25
8 Exhibit 12 Proof of Claim by FGIC, 145 14
9 Exhibit 13 Documents, 174 12
10 Exhibit 14 D'Vari Declaration, 200 18
11 Exhibit 15 Holzer Affidavit, 202 9
12 Exhibit 15 Holzer Affidavit, 203 9
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1 L. Kruger
2 ERRATA SHEET FOR THE TRANSCRIPT OF:
3 Case Name: In Re: Residential Capital, LLC, et al
4 Dep. Date: July 11, 2013
5 Deponent: LEWIS KRUGER
6 Reason codes:
7 1. To clarify the record.
8 2. To conform to the facts.
9 3. To correct transcription errors.
10 Page ____ Line ____ Reason ____
11 From ____ to ____
12 Page ____ Line ____ Reason ____
13 From ____ to ____
14 Page ____ Line ____ Reason ____
15 From ____ to ____
16 Page ____ Line ____ Reason ____
17 From ____ to ____
18 Page ____ Line ____ Reason ____
19 From ____ to ____
20
21
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24
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LEWIS KRUGER

Subscribed and sworn to before me
this day of 2013.

Deposition Errata Sheet

In re Residential Capital, LLC, et al.,
Case No. 12-12020(MG)

Deponent: Lewis Kruger
Deposition Date: July 11, 2013

Citation	Testimony
20:23-25	direct him not to answer that in confidentiality , based on the confidentiality mediation <u>confidentiality</u> .
23:22	A. No. <u>Yes</u> .
41:20	A. That's correct. <u>These were the only documents that I saw reflecting and incorporating the terms of the agreement.</u>
42:3-4	A. I'm trying to answer the question, but in terms of documents <u>that I saw reflecting and incorporating the terms of the agreement</u> , that's correct.
48:15	Cathy <u>Kathy</u> Patrick?
51:3	border <u>broader</u> plan issues.
53:6	A. That is <u>not</u> correct.
68:6	A. I did <u>, as did the Debtors' Board of Directors.</u>
115:9	A. I don't think so <u>I relied on other written materials.</u>
119:22	present, Cathy <u>Kathy</u> Patrick among them, and others
127:20	A. I don't think there's anything <u>else</u> .
157:15	\$337 billion <u>million</u> allocation?
162:23-24	A. They argue alter ego <u>and maybe</u> may be aiding
165:2425	came to a conclusion myself that it was not an appropriate <u>inappropriate</u> for there to be a FGIC claim at
166:9	think it's a planned <u>plan</u> confirmation

Citation	Testimony
181:22-182:6	it does seemed <u>seem</u> to me that the alternative to the global settlement is no Ally contribution of \$2.1 billion, which I believe is a lot of money; secondly, that the outcome of no Ally settlement and no global settlement agreement would mean that the parties themselves, all the inter-creditor issues would come the forth <u>fore</u> , creditors would be suing each other, creditors would be suing ResCap.
182:10	to the detriment of all competitors <u>creditors</u> . And I
187:10	has to do with planned <u>plan</u> confirmation. It

Date: 8/8/13

Signed: Lewis Kruger
Lewis Kruger